



*The*  
LABOR PROBLEM  
IN THE  
UNITED STATES

*By*

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AND

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## PREFACE TO THE THIRD EDITION

· Professor Cummins' untimely death in 1937 has left to another the task of revising his textbook. In doing so, I have tried as far as possible to retain his ideas and his words. The period since 1935, however, has been filled with important developments in the field of labor relations, and it has been my task, therefore, to try to weave the story and analysis of those events into the pattern already established in the earlier editions.

Several graduate students at Duke University have helped in gathering the material for the revision and in criticizing the manuscript from the student's point of view. I am particularly indebted to Roswell Townsend and Mrs. Juanita Kreps for the time and thought they have devoted to helping prepare the revision and to Aileen Lewis for aid in preparing the index revision.

FRANK T. DE VYVER

Durham, North Carolina  
November 1946



## PREFACE TO THE FIRST EDITION

The American labor movement is often considered in terms of specific problems, such as unemployment, child labor, scientific management, the closed shop, profit sharing and so on. These are indeed problems, problems that call for the highest degree of intelligence and patience on the part of the hardy souls undertaking to grapple with them, and I would not for the world seem to minimize their importance. Nevertheless, as I see it, there is a central labor problem distinguished from these numerous special problems and underlying them, and it is this problem in its various aspects with which the present volume deals.

From the dawn of human history man has striven without ceasing to maintain or to improve, as the case might be, his economic lot. And so he will continue to strive. The struggle for existence controls not only man but all creatures under heaven; it is an elemental fact of life on the planet earth and is not peculiar to any special type of economic society. The latter will determine the form which the struggle will take, but it will not create, nor can it destroy, the struggle itself.

Hand in hand with the capitalistic system of production came a large wage-earning class, whose members retained in their new status the time-honored characteristics of the human race. They struggled to exist; and when existence was relatively assured they also struggled, except in unusual circumstances, to better their manner of living. Actuated by the same motive, primitive man grappled with nature, which for him meant bringing most of his ingenuity and energy to bear upon the task of improving his technique of production. The wage earner of modern times finds blocking his path not nature but the employer. And so, just as inevitably as his primitive ancestor strove with nature, he strives with the employer; and perceiving that to improve his technique of production will not aid him greatly in that fight, brings his ingenuity and energy to bear primarily upon the task of improving, not his technique of production, but his technique of grappling with the employer. Thus it is, I believe, the employer-employee relationship which determines the character of the particular labor problem that is unique to the present industrial system.

As a result of this relationship the laborer sells his services to the employer for a price, and that price is determined by the same forces that

determine other prices: the desire of the buyer for the good, and the good's relative scarcity. The result is that the employer and the employee, though having much in common, are brought into direct conflict; for the employee's interest lies in limiting the supply of the commodity that he has for sale—his services—while the employer's lies in having it at hand in abundance.

In the struggle to improve their economic status, which means chiefly to limit the supply of their services for sale, the laborers have fixed upon certain definite evils in their condition which they are determined to reduce, if not eradicate; evils having to do with employment, hours, income, accident, and disease, and also with the less tangible aspects of their life. These may be termed their grievances, and around them the struggle centers. Actively engaged in it are three parties, the wage earner, the employer, and the government, and so the labor problem takes shape as a problem of the several attitudes of these three parties toward the grievances of the wage earner.

It follows from the foregoing that the modern labor problem exists because the present economic system is what it is, and hence that a "solution" can lie only in a radical change in that system. Since logically a consideration of "solution" must follow upon, rather than accompany, an analysis of the problem, the various proposals for a radical change, such as co-operation, state socialism, syndicalism, communism, and so forth, are not here considered.

My obligations are many. Of necessity I have leaned heavily upon numerous writers to whom I cannot possibly make specific acknowledgment beyond the notes scattered through the text. Labor leaders and employers have invariably been most generous and patient in their response to my appeals for aid, as have the authorities in charge of the various libraries that I have used. In particular I wish to record my very great indebtedness to my former teachers in labor economics, Professor E. S. Furniss of Yale University, and Professor David A. McCabe of Princeton University, the vigor and incisiveness of whose teaching are largely responsible for the interest that prompted the writing of this volume.

To Professor McCabe I am also indebted for his careful reading of the entire manuscript and his most penetrating analysis of it. A similar service was performed by Professor J. E. Smith of Hiram College, whose searching but kindly criticism is likewise responsible for the elimination of many errors. Professor Charles S. Tippetts of the University of Buffalo has read a number of chapters, and the wise counsel and encouragement he has so consistently given throughout the entire preparation of the book have been

especially serviceable. Professor Glenn McCleary of the University of Missouri Law School has read and criticized the chapters on the State and the Industrial Conflict, and my former colleague, Professor Mary Johnson of Wooster College, has done the same for the chapter on the Political Program of Organized Labor. Professor George Janes of Kenyon College, Professor J. D. Brown of Princeton University, and my colleague, Professor W. W. Bennett, have not only read sections of the manuscript but have been valuable sources of information, suggestion, and criticism.

Though in many respects the book is a coöperative venture, I alone must shoulder the responsibility for errors in fact or reasoning and for the general position taken.

**E. E. C.**

Schnectady, N. Y.

September 1931



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PART I  
INTRODUCTION  
ORIGIN OF THE WAGE-EARNING CLASS



## INTRODUCTION

### ORIGIN OF THE WAGE-EARNING CLASS

IN ITS more fundamental aspects the labor movement has always been with us. Although originally man may have been self-sufficient, still he had to get his living by some kind of manual labor. Sumner and Keller speak to the point when they say, ". . . With some little qualification, therefore, it may be held that labor distinguishes man from other animals.

"In labor it is seen that man's bane is his blessing. Labor is not by any means a curse, as the ancient writers will have it. When nature offers man a food supply which requires little labor to adapt it to immediate use, the effect is to make him lazy and good for nothing; he develops no considerable civilization. Yet labor is irksome; and leisure, besides being agreeable, is an indispensable condition for the production of auxiliary capital, or of ornaments, and for the reflection by which knowledge grows. At some point every individual must determine the line between labor and leisure, and societies fix such a line in their *mores*. The standard of living is the limit at which the last increment of effort equals the last increment of satisfaction.

"The savage knows as well as the civilized man that more work will bring more product; but increments of labor become more and more irksome and increments of the same products give less and less present satisfaction. There is a diminishing return in satisfaction and an increasing return in the pain of effort."<sup>1</sup>

Man has always had to face "the labor problem." The savage man had few wants, but he hated labor so much that it was hard for him to satisfy even these. As civilization advanced, the present and future wants of man increased greatly. He became willing to do more work not because work was less irksome but because there was greater satisfaction to be obtained in the result. In the main, man has been striving to reduce the amount of labor to be done. The savage simply did not labor more than enough to satisfy his hunger, and the civilized man, with ever-increasing wants, has constantly striven to decrease the amount of labor to be done in the satisfying of these more complex desires. In the early days his effort usually took

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<sup>1</sup> W. G. Sumner and A. G. Keller, *The Science of Society* (Yale Press, 1927), vol. 1, pp. 104, 105.



the form of trying to get somebody else to perform the work in his stead—that somebody else being frequently his wife. In those days wives were an economic asset. Slavery, serfdom, and other similar systems all developed as a result of man's attempt to satisfy his ever-increasing wants while reducing the amount of labor which he must perform, and the slaves and serfs in their turn always welcomed release from work and increase of wealth.

Until that utopia arrives in which he will have to do no work with his hands, man will continue his effort to improve his economic status; that is, to relieve himself of the necessity of performing manual labor while increasing his own material possessions. In that sense, therefore, the problem of labor will persist as long as man does, even if and when a new economic system succeeds in displacing the present one. Indeed, it is not certain that the solving of the fundamental labor problem, assuming it to be possible, would be socially desirable, as was pointed out by Sumner and Keller.

Practically speaking, then, there is no labor problem in the sense of a fundamental economic maladjustment which, if removed, would relieve man of the necessity to perform manual labor. The laborers have always been struggling against this necessity, and there is no reason to think that they will not always continue to do so. This does not mean that any given economic system may not be marred by maladjustments the removal of which would improve the economic status of the laborers. It is possible that our own economic system suffers from maladjustments of this sort, labor problems having in them the possibility of solution.

The modern labor movement is, of course, distinct from anything that had evolved before the industrial era, being primarily the struggle of the newly evolved wage-earning class to improve its economic status. Essentially the struggle has taken the form of an attempt to bring about a distribution of wealth more desirable from the laborers' point of view, rather than an attempt to increase the production of wealth. One class, variously termed the employer class, the capitalist class, etc., has control of most of the wealth, and so the struggle has brought the laborers into collision with this class, and the modern labor problem has taken shape largely as a conflict between these two great groups. This does not in any sense imply that the laborers have uniformly presented a solid front against an equally solid phalanx of employers. Time and again laborers have been quite as ruthless in their treatment of other laborers as they have been in their attitude toward their traditional opponents, the employers, if not indeed more so.

From the foregoing it may be gathered that the modern labor move-

ment has its roots in the origin of the wage-earning class, which is usually regarded as having appeared in the latter part of the eighteenth and the early part of the nineteenth century. It is not to be assumed that wage earners did not exist prior to this period. Indeed, there is rather convincing evidence that long before the nineteenth century there was a small class of workers who moved about working for one man and another; but these are, of course, not comparable to the great mass of men who now maintain themselves by working for others in return for wages.

### THE INDUSTRIAL REVOLUTION

So radical, so far-reaching were the changes wrought in the economic life of England during the late eighteenth and early nineteenth centuries that they have been termed a revolution. This industrial, and also what is sometimes called the social, revolution was part of the general economic development of a nation and should be viewed as a culmination of movements already on foot rather than as something entirely new. New industries were brought into existence and many of those already started were given fresh impetus and developed very rapidly. The domestic system of manufacture gave way to the factory system with power-driven machinery. Fundamental changes took place in agriculture. New crops were introduced, small land holdings were replaced by large agricultural estates. The renting class and the agricultural laborers increased so largely as to seem a permanent part of the social structure. Industrial districts evolved and a new type of town sprang up, composed mainly of industrial workers. Production developed on a large scale and more capital was needed than any laborer could supply. The laborer, much further removed from his employer than formerly, and realizing that he was destined to be a laborer all his life, became to some degree class conscious.

It was the industrial workers, naturally, whose lives were most altered by the industrial revolution. One point should be kept in mind from the start, however, and that is that the average worker before the industrial revolution was not an independent producer. As has already been noted, there were men working in factories before the revolution and many, too, were employed by capitalist merchants. In 1776 Adam Smith stated that in every part of Europe twenty workmen served under a master for every one that was independent. The real situation is aptly summed up by Mantoux when he says that large-scale production did not create the proletariat or the capital organization, it completed their evolution. Nevertheless there is no doubt that the revolution materially hastened the coming of a

large wage-earning class and the growth of capitalist organization to Gargantuan proportions.

There is room for some disagreement as to the ultimate effects of the revolution upon the industrial wage earners; but from a purely economic point of view the conclusion seems inescapable that the standard of living has risen, a larger population is being supported, and laborers in general have more of the physical comforts of life as a result of the use of power machinery on a large scale. On the other hand we must remember that the ultimate effects are not necessarily the ones that interest the wage earner. You may be able to convince a poorly paid factory hand that a hundred years from now his descendants will have a larger real income than he has, but in all probability the information will merely elicit a yawn. He has to be concerned about the present, else there will be no future for him; and that very pressing consideration is apt to crowd more remote concerns out of his mind.

If there can be little doubt that the long-time economic effects of the introduction of power machinery have been beneficial to the wage earner, it is still less questionable that the immediate effects were exceedingly bad. The workers were crowded together in factory towns in quarters whose wretchedness defies description. Filth and disease were rampant. The factory buildings were damp and poorly lighted; and accidents were the rule rather than the exception. Competition among the workers forced the working day to incredible lengths—twelve, fourteen, and fifteen hours. Women and children who could and would do unskilled work were cruelly exploited.

But an incident or two might be more enlightening than further generalizations. A witness, one John Farebrother, stated before a House of Lords' committee that his master made him, when he was overlooker, beat the children when he failed to extract a certain quantity of work from them. In his testimony he stated: "I have seen him (the master) with a horsewhip under his coat waiting at the top of the place, and when the children have come up, he has lashed them all the way into the mill if they were too late: and the children had half a mile to come, and be at the mill at five o'clock."<sup>2</sup>

In some mines trucks were not pushed, but drawn in this manner: "A girdle is put around the naked waist, to which a chain from the carriage is hooked and passed between the legs, and the boys crawl on their hands and knees, drawing the carriage after them."<sup>3</sup>

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<sup>2</sup> J. L. and Barbara Hammond, *The Town Labourer* (Longmans, 1917), p. 168.

<sup>3</sup> *Ibid.*, p. 173.

The number of such incidents could be multiplied. The men were not exempt from cruelties, nor did they enjoy any security of employment. Many were thrown out of work altogether and did the housework while the wife and the children toiled in the mill or the mine. Though no accurate wage statistics for the period are available, the real incomes of these factory workers were certainly not sufficient to maintain them, if the conditions in which they lived are any indication at all of the material resources at their command.

It was amid such miseries, such squalor, that the modern laboring class came into being. The laborer, now as then, does not know when he will be forced to go through another transition with its toll of miseries; and meanwhile he will continue to think in terms of his immediate personal interests rather than in those of long time and of society.

What were the other immediate effects of the industrial revolution upon the laborer? These will furnish a further clue to the origin of the wage-earning class and so to the development of the modern labor movement. The physical hardships and sufferings were not all that he had to undergo. Had they been, perhaps there would never have been a labor movement as we know it. At any rate it would probably have been short lived. But the status of the worker was being fundamentally altered.

In the first place he was losing to a very large extent his power to employ himself. Today one of the greatest fears of the wage earner is the fear of unemployment. Able to work, willing to work, seeing wealth in plenty about him, he may yet find himself shut out from the great industrial machine, a dependent, helpless figure. The importance of this change can hardly be overestimated. It is true that only in the simplest form of society is it possible for every man to create his own employment; but in the absence of specialization of any kind, the laborer could always work to support himself. He was self-sufficient. The results of his labor may have been meager, the comforts of life lacking, but he did have a job. To be sure, he had no control over his work in the sense that he could work or refrain from working as he chose. He had to work. But the point is that the work was always there for him to do.

As specialization developed, the laborer's power to create work for himself decreased. He could produce goods, but he had also to find some one to buy the goods, not always an easy task. The introduction of the machine meant specialization on a large scale. It also meant the necessity for a nice adjustment between production and the markets. When a maladjustment occurred, some laborers would inevitably be thrown out of work. In the present competitive society there is nothing that can compel an employer

to hire a laborer; economic need for laborers is the sole reason for engaging them. Furthermore, the machine has made the laborer a man practically without property. The means of production are too expensive for him to think of owning them. The simple tools he formerly had are useless in competition with the machine. He must depend upon the machine for employment; and the machine is not and cannot be controlled by human motives.

Much has been written about the past glories of craftsmanship and some present-day writers even clamor for a return to that simpler form of industrial organization. These glowing pictures of the craft age are sometimes grossly overpainted. The craftsman of a bygone day did not live a life of utter bliss. Poverty, disease, and death brought trouble then as now, and there were the special hazards and uncertainties of a society more directly dependent upon nature than our own. Yet though there has been much exaggeration and sentimentality in this advocacy of an industrial organization dominated by the spirit of craftsmanship, there has also been considerable merit in it.

Some time ago we had an experience that indelibly impressed upon us the utter aimlessness in his own eyes of the work done by the present-day industrial toiler. We were visiting a modern factory and became particularly interested in a group of men putting screws into a certain part of a partially completed piece of machinery. One man was taking the screws from a large box and handing them, one at a time, to a second man, who placed them in waiting holes. A third, screwdriver in hand, tightened them. There were ten groups of three men doing this work. We asked one or two of them what they were doing. All they could tell us was that they were putting the screws into the proper holes. They seemed to know nothing at all of the relation their work bore to the finished product. Yet this was the way these men earned their daily bread. At six o'clock the whistle blew, and before its echoes had died away, the doors of the factory were thrown open and men came tumbling out of them. Were these men interested in their work? What a question!

The craftsmen has not quite disappeared from the modern scene, but in the greater part of industry today the workers do not make things, they make parts of things. Work, to be satisfying, must subject the worker to a constant stretching process whereby his faculties are not only given full scope but are continually enlarged and strengthened. It must afford opportunity for the expression of his own individuality so that he feels it to be really his. It must have variety. The daily occupations of a considerable number of the population fail to meet even one of these requirements. They

are unmitigatedly irksome, irritating, painful. For all too few is work the satisfying thing it can be.

No man controls every aspect of his life at the present time. No man has ever done so. Anyone who stops to think about it at all knows that there is a price to be paid for every good. The civilized man may appear to have more liberty than the savage, but in reality he is simply born into a different kind of bondage, with duties and obligations that could not exist for his savage ancestors. He does not control his life any more than they controlled theirs. The savage was not bound to his state and to his family as the modern man is bound, but to enjoy these liberties he had to forfeit others which the modern man enjoys. The savage was not a free man. He was bound to the land by economic necessity in a way that the modern man is not.

Although no man has now or ever has had complete control of every aspect of his life, the degree of control in some circumstances is greater than in others; and the desire to be situated in a set of circumstances which will allow of a relatively large measure of control is one of the strongest in man's nature. Today many a laborer is receiving what is generally regarded as a fair income; his hours are not unduly long, at least in the light of what they have been in times past; and the conditions under which he works would have impressed the factory worker of the early nineteenth century as positively luxurious. Yet he complains, he is dissatisfied: he wants something which to him is exceedingly precious—control of his job, his circumstances, his life. The change in the matter of control brought about by the industrial revolution was great enough for us to call it a fundamental one. Labor has been brought together in large armies and in the very nature of the case this has meant greater discipline from the outside. It has become necessary for the employers to assume direction over many of the details of the workers' lives.

Herbert Spencer, individualist though he was, perceived this seeming anomaly in an individualistic society. "The wage-earning factory-hand does, indeed, exemplify entirely free labor, in so far that, making contracts at will and able to break them after short notice, he is free to engage with whomsoever he pleases and where he pleases. But this liberty amounts in practice to little more than the ability to exchange one slavery for another; since, fit only for his particular occupation, he has rarely an opportunity of doing more than decide in what mill he will pass the greater part of his dreary days. The coercion of circumstances often bears more hardly on him than does the coercion of a master on one in bondage." <sup>4</sup>

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<sup>4</sup> Herbert Spencer, *Principles of Sociology* (Appleton, 1896), vol. 3, p. 525

## CONDITIONS IN ENGLAND AND AMERICA COMPARED

It is somewhat inaccurate to speak of an industrial revolution in the United States since there was no manufacturing to speak of in this country before the middle of the last century. It had been England's policy to discourage manufacturing in the colonies, and, as a matter of fact, this policy seemed to be quite in line with the colonies' best economic interests. The richness of the land made almost any manufacturing industry a doubtful venture, because men who could get their living easily from the soil would naturally be averse to the more confining and poorly paid labor of the factory. Because of the abundance of natural resources capital found more profitable investment among the extractive than among the manufacturing industries. Not until the latter half of the nineteenth century did manufacturing in America begin to rival agriculture in economic importance. Hence, though the results of the industrial revolution are abundantly apparent in this country, the development and growth of manufacturing has been a much more gradual process here than it was in England.

Our manufacturing enterprise has had the advantage of England's experience and has been able to avoid some of the missteps which have had painful consequences for England. The American labor movement reflects this difference. One writer has gone so far as to say that "what British labor does in one decade will be done in America the next." This is undoubtedly drawing too close a parallel between the two labor movements. Although they have fundamentally the same origin, we shall see that the peculiar course of industrial and political development in the United States has produced a clearly distinguishable type of labor organization.

A study of the labor movement in England is also valuable for purposes of comparison, and in our study of the American labor movement we shall often refer to its English counterpart. Though the movement in America is by no means a duplicate of the corresponding movement in England, there is little doubt that labor in America has been much influenced by pertinent events in England. In dealing with the influences which have differentiated the American from the English labor movement, it is important to see both what they are and just how they have operated to make the American movement what it is.

What, then, are the distinguishing features of industrial and political development in this country that are most prominently reflected in the character of the American labor movement? We have spoken of the great abundance of land, of the unparalleled wealth of natural resources. Quite as significant is the "free" way in which the land was handled. Australia,

too, had a great abundance of land; but being shut up in vast holdings, inaccessible to the workers, it offered no means of escape from intolerable conditions of labor. Hence, in Australia there arose a labor movement characterized by trade unionism, socialistic politics, governmental coercion of employers, and a parliament dominated by a labor party. In this country the land was at first seized by speculators and slave owners. Only after many years of political struggle did the mass of people succeed in getting the Homestead Law enacted, which gave the man without property a chance to acquire some land of his own. Nor was the battle won with the passing of this act, for the fat land grants to the railroads and a reappearance of land speculators offered a new menace. Our "free land policy" was the fruit of long and bitter warfare, but it had a great effect on the development of the American labor movement.

Another important item in the list of influences is the comparatively early date at which American labor obtained the suffrage. Many years before the workers in other countries had the right to vote, practically universal manhood suffrage prevailed in this country. Although the laborers cannot be said to have won any great victories at the polls, the "labor vote" has been a significant factor in political struggles from the very beginning of the republic. Who knows whether, if universal manhood suffrage had not been obtained until late in the nineteenth century, American labor might not at the present moment be pinning all its hopes of economic salvation to labor bills? Through its early participation in politics, labor learned some valuable lessons, the most important one being not to expect that political action would bring in the millennium. Without question, the course of the American labor movement has been influenced vitally by the fact that the laborers have had the vote almost from the first.

Attention should also be called to another very important factor in the development of American labor. Until recently there were few major industries in the United States which were not manned to a very large extent by immigrants or by children of immigrants. For example, the Immigration Commission found in 1910 that 68 per cent of the silk operatives were of foreign extraction; in the woolen and worsted industry 46.5 per cent were foreign born and another 30.4 per cent were of foreign parentage. The coal, steel, and clothing industries also showed a majority of employees who were foreign born or born of foreign parents. Gross immigration from 1820 to 1925 amounted to more than 36 millions. This figure does not, of course, represent a net addition to our population, as it takes no account of departures, which in some years have amounted to a sizable total—although we have no actual figures on the subject before



1908. Then, too, the immigrants have probably displaced some of the native population. The foreign laborer's standard of living being usually lower than that of the native, the latter has had either to lower his standard of living, get out of the labor class, or reduce the size of his family. Birth rates among native laborers indicate that a good many have chosen the last named course.

Although religious and political causes have played leading parts in the past, and still at times carry minor roles, the foreigner's chief reason for coming to the United States has been an economic one. Consequently it is the class on the lowest economic level—the laboring class—which has been most attracted to this country. Prior to 1882, practically the entire body of immigrants came from Germany, the United Kingdom, and the Scandinavian countries, but since that year the flow from the northern nations has waned and laborers from Italy, Austria-Hungary, Russia, and other southern and central countries of Europe have come to make up the bulk of our immigration. The great majority of immigrants have always been in the productive class. The number of immigrants between the ages of fourteen and fifty-four has often been above 75 per cent; the proportion of men to women, two to one.

Another significant fact about the immigrants is that, particularly among the early arrivals, the unskilled outnumbered the skilled; occupational statistics have not been altogether reliable, but enough is known to establish this fact. For example, the Immigration Commission found that in the decade between 1899 and 1910, of nine and one-half million who entered, more than seven million claimed an occupation. Of these, 35.9 per cent were common laborers and 23.4 per cent were farm workers. The new immigration policy has brought us a larger population of skilled laborers and professional workers, with effects that are not yet clearly evident. Undoubtedly the course of our labor movement has been materially influenced by the large percentage of laborers among the immigrants. A homogeneous class of laborers like England's is far more susceptible to the development of class consciousness than is the heterogeneous mass which has constituted the American labor group. It is apparent that our foreign labor population, its vast size, its special character, would alone differentiate the American labor movement from the English, as well as from all others.

#### CHANGES IN IDEAS

Thus far we have dwelt upon the material changes that occurred during the eighteenth and early nineteenth centuries. Of scarcely less importance,

if not indeed of greater, were the changes that took place in the realm of ideas; changes which were also destined to have a profound bearing on the labor movement. For many years, in fact until well into the eighteenth century, it was generally accepted that a natural and proper function of the government was to regulate economic and social affairs, even to minute details. During the eighteenth century a contrary set of notions began to take hold of the popular mind. Men began to feel that, within limits, they had a right to do as they pleased, and that the limits were wider than those previously acknowledged. They began to resent oppression, to oppose the interference of the government in the conduct of business, and even to contend that a policy of noninterference would benefit not only the individual most immediately concerned but the whole society as well.

This general attitude toward public affairs, an attitude usually termed individualism, pervaded many different fields of thought. Near the end of the seventeenth century the concept of the divine right of kings was superseded by the concepts of natural liberty and the compact. The theory of the divine right of the church gave way to the view that a church is "a voluntary society of men" coming together in a way "absolutely free and spontaneous." Sometime later the notion of utility appeared on the scene. From these various doctrines the philosophers, notably Locke and Hume, developed individualism. The individual was exalted in some quarters to reduce the power of the monarch, in others to destroy the rule of the church. The doctrine came in handily for the practical businessman because it upheld private property; and soon the theory of a harmony of interests between private advantage and public good had become part of the stock-in-trade of the philosophers.

It remained for the economists to provide the doctrine with a substantial prop in the form of a scientific basis. They pointed out that it is not only unjust to interfere with man's natural liberty in the pursuit of his interests, but also unwise because of the existence of natural laws which prevent interference from arriving at the desired ends. For example, David Ricardo developed what became known as "the iron law of wages." Wages cannot be arbitrarily increased because they will always tend to be the amount "necessary to enable the laborer to subsist, and to perpetuate his race without either increase or diminution." If wages are increased, population will increase too, and ultimately wages will be brought back to their former level. If wages are decreased, they will be insufficient to maintain existence; some people will die off, the labor supply will be decreased, and wages will again return to their former level—the level of subsistence.

Not only, said the economist, was it unjust and futile to attempt the regulation of man's economic activities, but the removal of these restrictions would bring benefits as well as forestall evils. The glories of free competition were chanted. Capital should be in the hands of the most efficient in order to raise production to its highest level. These most efficient ones should be allowed to use their capital as they saw fit. In directing its use to serve their own interests, the argument ran, they would serve the interests of society as well. For is it not to their interests to produce wealth and to produce that wealth at the lowest possible cost? As their profits increase is there not more wealth for consumption? If a man wants wages, let him find out what goods other men desire and then offer to furnish these goods. The one man secures the wages, the other receives the goods he wants, and thus the desires of both are gratified. Since all men are free to choose, the man who offers the best goods or the best work will be preferred. Is not society being served at the same time? Man's economic activity is governed by self-interest. He will produce efficiently only when he is rewarded for so doing. Permit him to produce as he sees fit and permit him to keep the profits for himself. He will be serving not only his own interests but also the interests of society—has he not increased the total amount of wealth? Thus spake the economists.

Even critics of the present capitalistic system as stern as Sidney and Beatrice Webb admit the soundness of this doctrine as applied at that time, when capitalism was getting its start: "It must, we repeat, be admitted that, despite all drawbacks, this enormous development of successful profit making meant, at any rate for the time being, a vast increase in that part of the nation's earnings which may fairly be called its wealth. . . . The whole nation shared, through declining prices, combined with a reasonably stable currency, and on the whole stable or even slightly rising rates of wages, in the ever-growing stream of commodities, and steadily widened the range and increased the quantity of its consumption."<sup>5</sup>

The philosophy of *laissez faire* faithfully mirrors the spirit of the time, and so it cannot be said to have caused the decline of governmental restriction and regulation, but is more accurately spoken of as being concurrent with it. Probably the businessmen would have succeeded in breaking down governmental control without philosophical aid; but their struggle was made easier by the plentiful supply of doctrinal ammunition to which they had access. In the same way the task of the philosopher was lightened by the practical demonstration of his theories which the money-making business-

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<sup>5</sup> Sidney and Beatrice Webb, *The Decay of Capitalist Civilization* (Harcourt Brace, 1923), pp. 103-104.

man was furnishing. At any rate, there was a rapid and pervasive decline of governmental regulation.

To be sure, governmental control as found in the statute books had never been strictly enforced. The regulations were too numerous and too petty. Many of the provisions of the Statute of Apprentices were continually disregarded. Various commercial companies were being developed without much interference on the part of the government. Manufacture and agriculture had grown up fairly free of government regulation. The whole Tudor code, after an investigation by Parliament, was finally swept away. After being amended in 1813 by the removal of the wage clauses, it was in the following year erased from the statute books. Even before this, by the last part of the eighteenth century, commerce, manufacturing, and agriculture had become relatively free of governmental control.

The whole structure of government regulation of industry, which had been in the process of development for some centuries, was eaten away bit by bit. We of this day know that it was soon to be rebuilt, although in a different form. And the story of its restoration is largely a story of the English wage-earner's struggle to improve his economic status.

The English laborer is not the only one who has had to struggle to defend himself against the application to practical affairs of the philosophy of individualism and *laissez faire*. The American laborer has found his way blocked by the same obstacle, although it has taken a somewhat different shape. Unhappily for American labor, the Constitution of the United States was written and adopted during the period when individualism was dominant and, as might be expected, reflects the prevailing philosophy. Even more significant has been the interpretation of the Constitution by the courts, particularly of the Fourteenth Amendment during the last few decades. Hence, in no small part, the American labor movement has had to center its efforts upon a struggle to free the workers from the bondage laid upon them by the Constitution as interpreted by the judges.

The material changes that occurred in England during the latter part of the eighteenth and early nineteenth centuries were in truth cataclysmic in their effects upon the lives of American as well as English workers; but it is not too much to say that the changes that took place in the realm of ideas at about the same time were just as far-reaching.



PART II  
GRIEVANCES

The coming of the wage-earning class meant that for the great mass of persons who constituted it, the struggle for existence or for an improved standard of living, as the case might be, would take the form of an attempt to wrest from their employers certain economic improvements with respect to dissatisfactions which they felt concerning unemployment, hours, accidents and disease, income, and also matters of an intangible sort. These may be termed the laborer's grievances. It is not to be thought, of course, that all unemployment, all accidents and disease, all long hours, all inadequate income, and all psychological ills have grown out of the employer-employee relationship. The world was not a paradise before the coming of the industrial system. The thing that is peculiar to the industrial system is that under this system any attempt on the part of the worker to alleviate his grievances, thereby improving his economic status, often puts him at cross-purposes with the employer. A consideration of these grievances must therefore precede an analysis of the modern labor problem itself.

# CHAPTER I

## UNEMPLOYMENT

### THE NATURE OF UNEMPLOYMENT

ONE of the wage-earner's greatest fears, if not his greatest, is that of unemployment. The possibility of injury and death he faces with scarcely a quiver. The bullets of the company policeman frighten him not. But the terror of being out of work haunts him, and fills him with a restlessness which tends to take the form of acute dissatisfaction with his economic position. The fear is omnipresent. It hangs like a sword of Damocles constantly over his head.

There are many persons who can never be fitted into the present industrial system. These are known as the unemployable. There are those who because of sickness or accident have become unfit to perform any gainful work, or at best can earn but a small part of their living. Many of the aged must be dealt with in some other way than by trying to find profitable work for them to do. There are the feeble-minded, who, despite the efforts of some industrial managers, have found no adequate place in industry. In addition to those who cannot work, there are also those who will not work. "Each of these," says Beveridge, "is in truth as definitely diseased as are the inmates of hospitals, asylums and infirmaries, and should be classed with them. Just as some suffer from distorted bodies and others from distorted intellects, so these suffer from a distortion of judgment, an abnormal estimate of values, which makes them, unlike the vast majority of their fellows, prefer the pains of being a criminal or a vagrant to the pains of being a workman."<sup>1</sup> Perhaps the time will come when this group, too, will be classed among the unemployable, but until mental science has made further progress, they must be considered separately. There are those who, although able to obtain some kind of employment, are too inefficient to earn their maintenance. All of these different classes of people are at one time or another, some of them all the time, either out of work or unable to support themselves when they are at work. In some respects they constitute a sociological or medical problem rather than a purely economic one. Many of them

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<sup>1</sup> W. H. Beveridge, *Unemployment: A Problem of Industry* (Longmans, 1930), p. 134.



are mentally incapacitated ; others who are mentally competent are physically unfit ; still others, apparently sound in mind and body, are morally incapacitated. Although there is some question as to the propriety of including the unemployables in unemployment statistics, they cannot be left out of consideration, especially in dealing with unemployment as a grievance of the wage earner.

It is quite true that employers cannot be expected to hire the morons, the inefficient ones, or those incapacitated for gainful work by accident or disease. On the other hand, may it not be that industry is to some extent responsible for the unemployability of these misfits? The wretched surroundings in which so many wage earners are forced to live, the inferior food which they must eat, may account for some of the undernourished and diseased bodies ; perhaps these in turn have led to mental disorders. The lack of suitable recreation and of medical care which is enforced by poverty may balk the laborer's efforts to maintain the mental and physical vigor necessary to good workmanship. Moral weaknesses may also be partly traceable to the character of modern industry. Perhaps the laborer's not uncommon belief that after all he is merely a wage slave in a ruthless system operated for somebody else's benefit may account for his preferring "the pains of being a criminal or a vagrant to the pains of being a workman." Finally, the monotony and dreariness of present-day industrial work are not conducive to moral, mental, and physical well-being.

And so, however improper it may be to group them together, the laborer, at least, is not apt to make a careful distinction between the unemployable and those who are willing and able to work but unable to find a job. He is not apt to turn the one group over to the sociologist and the medical expert and the other to the economist. What he sees is a man out of a job, lacking the means to support himself, and he resents it. It is natural that his resentment should be directed toward the employers or toward the industrial system which to him seems responsible for these conditions. Hence, if we are to understand the wage-earner's attitude toward the present economic system we must take cognizance of all types of industrial inactivity of workmen.

On the other hand, an indiscriminate treatment of unemployment would lead to nothing but confusion. Lines must be drawn, by the economist if not by the laborer, between the various types of the unemployed ; and closer attention must be accorded that unemployment which is directly due to the failure of the industrial system to function perfectly in all its parts. Strictly speaking, unemployment should be defined as "involuntary idleness

on the part of a workman who is able to work." <sup>2</sup> Such workmen are out of work definitely because of some maladjustment in industry. They constitute a distinctly economic problem, and it is their plight that furnishes the dominant theme in the worker's hymn of hate; for although he cries out loudly against the accidents, the illnesses, the premature old age, which disfigure our industrial society, he probably reserves his bitterest reproaches for the employer and the industrial system which prevent a man physically and mentally fit—and willing, nay anxious, to work—from obtaining a job. This resentment is to be seen in such phrases as "the right to a living," "the right to work." Many laborers understand the necessity of risks in industry and assume them uncomplainingly, but they cannot understand why a man willing and able to work is not allowed to do so. It is a condition which the workers have not created and over which they have no control. To them it seems the result of an exercise of will on the part of the employer. It follows from his act. He discharges them when they are performing their work faithfully and well, and they are apt to blame him because in their eyes he seems to be the guilty party.

#### INADEQUACY OF STATISTICS

One of the most important problems in connection with unemployment is to find out how much of it there is. No satisfactory means of doing this has ever been devised for use in the United States. Estimates vary widely, and there is nothing like the adequate knowledge of the situation which must precede any well-ordered attack upon the evil. In connection with three of the United States census of population, taken in 1880, 1890, and 1900, efforts were made to ascertain the total numbers of the unemployed as part of the regular canvass. No further attempt was made until the census of 1930. The expense involved was a strong deterrent, but perhaps equally important was a lack of confidence in the results on the part even of those who planned and organized the investigations.

The results of the 1930 census were not wholly satisfactory. There was a great deal of misunderstanding concerning the meaning of the figures when they were first published and the census officials did not succeed in clarifying them to everybody's satisfaction. They were subject to a good deal of questioning, much of it coming from those in a position to make

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<sup>2</sup> Those out of work because they are on strike are not here considered as unemployed. The strike is an economic weapon of labor organizations and the quitting of work in a strike has as its purpose the attainment of some definite economic end or ends. This situation constitutes a unique problem, which will be treated later in connection with trade-union policies.

valid criticism of the work. One of the most vigorous critics was Dr. Charles E. Persons, who was formerly associated with the Bureau of the Census but resigned as a protest against "its attempts to minimize the number of unemployed." According to Dr. Persons, had the Bureau's estimate been made on a proper basis the total of unemployed might easily have been placed at 5,000,000 instead of the 2,000,000 given out.<sup>3</sup> In the 1940 census of the unemployed, taken as of the week of March 24 to 30, an attempt was made to correct the errors of the 1930 census.

The other repositories of unemployment information are the reports of the United States Employment Service, reports of employers regarding the number of employees on their payrolls, trade-union statistics showing the percentage of unemployed members, and the statistics of the state and federal unemployment compensation agencies. All of the public employment offices are now cooperating with the United States Employment Service, and the statistics compiled from their reports are about as reliable as possible. The reporting is now uniform but some criticism can be made of some of the uniform practices. Carpenters, for example, are classed as skilled workers. Such a classification is correct if only skilled carpenters are included, but a farmer who has built a barn may register as a carpenter and be counted as such. Obviously this will overestimate the unemployment among carpenters or overestimate the number of skilled carpenters available for employment. Then, many of the unemployed never apply to an employment agency at all, while many who do register are not out of work but merely want a different job. There is also bound to be some duplication, as many persons seeking work will register with several different agencies.

Employers' reports constitute an excellent index of the volume and trend of employment for the industries concerned, but in order to give a complete picture the coordinating agency would have to cover all industries and employments, a well-nigh impossible task. Even at their best, such reports could show only the trend of employment, never the whole number of persons out of work. The earliest current collection of pay-roll data in this country was made by the New York State Department of Labor, its statistics dating, in effect, from June, 1914. The United States Bureau of Labor Statistics began to collect pay-roll statistics shortly after the New York bureau, but confined itself to fewer industries. Beginning with four, the scope of the inquiry was enlarged in 1922 to include forty-two manufacturing industries. Since the year 1928 the range of the survey has been extended to include fields of industry other than manufacturing, among them wholesale and retail trade establishments, public utilities, anthracite

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<sup>3</sup> *The New Republic*, 64:4 (Aug. 20, 1930).

and bituminous coal mining, metalliferous mining, and hotel management. Now monthly reports on employment are available for one hundred and fifty-seven manufacturing industries and sixteen nonmanufacturing industries.

At the present time there are three federal bureaus—the Bureau of Labor Statistics, the Interstate Commerce Commission, and the Maritime Commission—collecting pay-roll statistics. The Bureau of Labor Statistics cover the widest field. The states, too, now have more definite information on employment within their own boundaries because of the work of their own unemployment compensation systems and the state divisions or affiliates of the United States Employment Service.

In many countries trade-union data are compiled, but little has been done in the United States. Since the fall of 1927 the American Federation of Labor has been compiling such data monthly for its members; and the Congress of Industrial Organizations has also published information on unemployment in its monthly bulletin called *Economic Outlook*.

Today the Social Security Board's Bureau of Employment Security provides an excellent source of employment statistics. The number of claims for unemployment compensation which are filed and are continued each month give a good indication of actual unemployment among those insured. It must be remembered, however, that when a worker's claim for benefits has expired, he no longer is counted in the Bureau's figures.

#### EXTENT OF UNEMPLOYMENT

Although unemployment statistics are sporadic, definitely limited in their scope, and far from satisfactory as regards accuracy, they are sufficiently numerous and significant to disclose a problem of vast proportions and of the gravest character.

There are some current beliefs about unemployment which examination shows to be almost, if not altogether, groundless. There is, for example, the notion widely held and frequently voiced by self-made men—and by others—that “anyone who really wants to work can get a job.” They do not see why everyone cannot start at the bottom and work up to the top as they have done. Initiative and a willingness to face and overcome obstacles, they think, are all that anyone needs to succeed. It requires only a moment's reflection to perceive the unsoundness of this smug doctrine. An industry working on full time requires a certain number of laborers. But not very many industries operate at full time continuously, and when it is operating on part time, some of the laborers will be thrown out of work. For example, in his inaugural address before the American Institute of Mining and Metallurgical Engineers, Mr. Herbert Hoover said, “Owing

to the intermittency of production, seasonal and local, this industry has been equipped to a peak load of 25 or 30 per cent over the average load. It has been provided with a 25 or 30 per cent larger labor complement than it would require if continuous operation could be brought about.”<sup>4</sup>

During 1934 most of the factories in this country were running part time or were idle altogether. Even if a great many other businesses had been operating at full capacity, which they were not, most of the laborers turned loose by these factories could not have been absorbed, for the very obvious reason that they were not trained for other kinds of work. There is unemployment in the coal industry every year, not only during years of business depression. The same is true of the garment industry. It is absurd to say that any garment worker could get a job if he wanted one—a job working in a steel mill, perhaps? Special trade qualifications are required in the skilled trades, and in many of the so-called unskilled trades the physical demands are very heavy. A garment worker would not last long doing hard physical labor.

Another common misapprehension is that the unemployed are the incompetent and unfit. There is a little justification for this belief, but hardly more than for the idea that any man can find a job who really wants to work. A great deal of unemployment is due to seasonal fluctuations or to industrial depressions, in consequence of which practically all the workers in the factory or even in the whole industry may be laid off regardless of their qualifications or abilities. The men laid off during these partial cessations of activity will be the ones whose services, for some reason, are not desired. The reason may have nothing whatever to do with their fitness or competency, as is indicated by the not uncommon spectacle of able but class-conscious workers being laid off before less able but more tractable workers. But even in factories where no such consideration enters in, it is not always the least efficient men who are laid off first. If, as frequently happens, some departments are shut down and others maintained, the highly skilled worker in the closed department will be laid off while the less capable worker in the operating department is kept on the pay roll. When the mines are wholly or partially closed down, those whose responsibility it is to keep them free from water must be retained while a highly skilled coal cutter may find himself out of a job. The least efficient workers will probably be laid off first if all departments are affected alike; but note that they are laid off not because they are inefficient but because some contingency or other has forced the factory or the mine to operate on a part-time basis. Were all the workers exactly equal in efficiency, some would still be discharged.

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<sup>4</sup> Herbert Hoover, *Inaugural Address before American Institute of Mining and Metallurgical Engineers*, Feb. 17, 1920.

The unemployed we have always with us. They are not merely the fruitage of business depressions. Depressions increase the number greatly; but there is at all times a residuum, and a considerable one, of jobless men and women. Ernest S. Bradford, sometime vice-president of the American Statistical Association, estimates that "an average of at least a million and a half industrial wage earners in the United States are constantly unemployed, taking poor and prosperous years together."<sup>5</sup> A more startling estimate is that made by the Committee on Waste of the Federated Engineering Societies for the period of 1917-1918, a time when to all appearances the job was seeking the man. Yet the committee estimated that there were a million men out of work at that period. Another study showed that the number of unemployed wage earners in the urban centers of the United States for the period 1902-1917 was never less than a million, and probably averaged two and a half millions, and this did not include the agricultural workers.<sup>6</sup> Unemployment statistics published by the Massachusetts Department of Labor, based upon reports of trade-union secretaries, reveal that for the period 1908-1922 there was an average of 7.7 per cent of unemployment among trade-union members, the percentage reaching in December, 1920, its highest recorded figure of 28.7<sup>7</sup>. And it should be kept in mind that unemployment among trade-union members was probably proportionately less than among non-union workers.

We have seen that there are no statistics available in the United States which are capable of revealing the total amount of unemployment at any given time. Rather doubtful estimates are all that can be offered. The United States census for 1900 disclosed that over six million workers, or at least one fifth of all persons engaged in gainful occupations, had been unemployed at some time during the year. Another estimate indicates that some four million workers were unemployed in January, 1908, who had been employed in September, 1907. The same investigator estimated that the unemployed increased from four million in May, 1914, to five million in December of the same year.<sup>8</sup> Then followed a period of great prosperity. The army of the unemployed, although depleted, did not disappear during this time. In 1921 came a business depression; and it has been estimated that the number of unemployed wage earners had increased by the winter of that year to five or six million. In 1927 and 1928 the situation again became grave. The Labor Bureau, Inc., of New York, estimated

<sup>5</sup> Ernest S. Bradford, "Industrial Unemployment, A Statistical Study of Its Extent and Causes," U. S. Bureau of Labor Statistics, *Bulletin No. 310*, p. 2 (1922).

<sup>6</sup> Hornell Hart, *Fluctuations in Unemployment in the Cities of the United States, 1902-1917* (Trousline Foundation, 1918), p. 51.

<sup>7</sup> Massachusetts Department of Labor and Industry, *Annual Report of Statistics of Labor, 1923*, pp. 18-22.

<sup>8</sup> Hornell Hart, *Fluctuations in Unemployment in the Cities of the United States, 1902-1917* (Trousline Foundation, 1918), p. 51.

on the basis of admittedly insufficient evidence that there were about four million unemployed, or nearly one tenth of the total of gainfully occupied in the nation.<sup>9</sup>

The United States Bureau of Labor Statistics asserted that for the country at large in 1927 employment in manufacturing dropped to a point lower than for any year since 1914 except 1921, and also reached the conclusion that there was a shrinkage of 1,874,050 persons from the number employed in 1925. Although the latter part of 1928 and the first part of 1929 brought some improvement, unemployment began to increase in the fall of 1929 and by 1930 had swelled to proportions greater than any seen in the United States since 1921. On August 23, 1930, the Bureau of the Census issued a statement concerning the number of the unemployed which said that "the total number of persons usually working at a gainful occupation who were reported at the time of the census in April as without a job, able to work, and looking for a job, amounted to 2,508,151."<sup>10</sup>

The table<sup>11</sup> below shows the employment situation in 1940.

EMPLOYMENT STATUS OF THE POPULATION, BY SEX, FOR THE  
UNITED STATES, 1940

<i>Population</i>	<i>Total Persons</i>	<i>Males</i>	<i>Females</i>
Total population .....	131,669,275	66,061,592	65,607,683
Under 14 years of age .....	30,566,351	15,507,844	15,058,507
Not in the labor force .....	43,313,425	10,609,508	37,703,917
Engaged in own home housework	28,931,869	267,125	28,664,744
In School .....	9,013,342	4,593,630	4,419,712
Unable to work .....	5,268,727	2,966,225	2,302,502
In institutions .....	1,176,993	767,474	409,519
Other and not reported .....	3,922,494	2,015,054	1,907,440
In the labor force .....	52,789,499	39,944,240	12,845,259
Employed .....	45,166,083	34,027,905	11,138,178
Public emergency work (WPA, NYA, CCC, etc.) .....	2,529,606	2,072,094	457,512
Seeking Work:			
Experienced .....	4,326,469	3,381,881	944,588
New workers .....	767,341	462,360	304,981

<sup>9</sup> *The New Republic*, 53:337 (Feb. 15, 1928).

<sup>10</sup> *Monthly Labor Review*, 31:884 (Oct., 1930). In considering this estimate account should be taken of the criticism made by Charles E. Persons. See p. 22.

<sup>11</sup> Sixteenth Census of Population: 1940, The Labor Force, Pt. I, U. S. Summary, vol. III, Introduction, Table 1, p. 3.

Figures compiled by the American Federation of Labor have been cited most frequently in recent years. These calculations are based on a combination of the data obtained from a number of the different sources described above. The Federation figures showed an average of 3,947,000 unemployed in 1930, 7,431,000 in 1931, and 11,489,000 in 1933. The unprecedented figure of 13,500,000 was reached in March, 1933. This is the peak for all time. The average for the year was 11,904,000, suggesting that the recovery program of the Roosevelt administration was instrumental in stimulating employment to some extent. A decline in unemployment, according to the Federation, started in March, 1933, bringing the figure down to 10,122,000 in October. Since then there has been some increase, the estimate for January, 1935, being 11,776,000.

During the period of the Second World War there was an acute shortage of manpower, yet even under such circumstances, unemployment compensation claims continued to be paid. In July, 1944, according to the Social Security Board 255,219 persons were reported receiving benefits as totally unemployed. Such a situation can be explained by several factors, including temporary shutdowns while waiting for materials, the difficulty of placing minority groups on new jobs, and the limited placement possibilities for the unusually large number of women in the labor market.

The United States Bureau of Labor Statistics recently presented some interesting employment figures for the years 1919 to 1941, using the 3-year average, 1923-1925, as the base—100. These are given in the following table:<sup>12</sup>

EMPLOYMENT IN MANUFACTURING INDUSTRIES, 1919-1941  
(1923-25 = 100)

1919—106.7	1927— 99.5	1935— 91.7
1920—107.1	1928— 99.7	1936— 99.0
1921— 82.0	1929—106.0	1937—108.0
1922— 90.7	1930— 92.4	1938— 90.9
1923—103.8	1931— 78.1	1939— 99.9
1924— 96.4	1932— 66.3	1940—107.5
1925— 99.8	1933— 73.4	1941—127.7
1926—101.7	1934— 85.7	

Some industries are much more subject to unemployment than others. Perhaps no industry suffers from it more chronically than coal mining. One estimate for 1921 places the total number of miners working full time in the

<sup>12</sup> U. S. Bureau of Labor Statistics, *Bulletin No. 694*, vol. 1, p. 169 (1942).



bituminous coal industry at 10 per cent, the number working part time at 50 per cent, and the number having no employment at all at 40 per cent. In dealing with this subject the Bituminous Coal Commission appointed by President Wilson in 1919 concluded that with a mine capacity of over 700 million tons the American market required only 400 million tons of bituminous coal. "Full-time employment in the coal mine cannot, therefore, be expected," it declared, "until the industry is put on such a basis that only those mines remain in operation whose output is required to supply the needs of the country." According to another estimate, the industry uses almost 700,000 men to do the work that "certainly 500,000 could do without increasing the average daily output per man."<sup>13</sup>

Two facts of great significance clearly emerge from the foregoing: first, unemployment exists on a vast scale during periods of depression, but is constantly present in considerable amounts whether the business tide is at ebb or flow; second, there is the most pressing need for official, accurate, and easily available information regarding the state of unemployment at any given time.

#### CAUSES OF UNEMPLOYMENT

Various classifications of the causes of unemployment have been devised, but the content of all is essentially the same. An attempt will be made, not to give an exhaustive treatment of these causes, but to call attention to the more significant ones and to note how they function. Among the most serious causes are those which are due to changes in the demand for labor. There are fluctuations in the individual employer's demand for labor which give rise to the unemployment known as casual unemployment. There is seasonal unemployment, which is due to fluctuations in demand within a given industry at different seasons. There is cyclical unemployment owing to periodic fluctuations in the demand for labor over practically all branches of industry. There are changes in the demand for labor resulting from technological innovations in methods of production, also from permanent changes in the demand for particular types of goods. Finally, there are maladjustments in the labor market. From the beginning of modern industry these various causes have functioned to recruit the army of the unemployed. And usually it is the "laborer in overalls" who has been hit the hardest.

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<sup>13</sup> W. H. Hamilton and Helen R. Wright, *The Case of Bituminous Coal* (Macmillan, 1925), p. 60.

*(a) The Labor Reserve*

Students have long recognized the existence of an over-supply of casual labor, but the discovery of the reason for this "chronic and ubiquitous condition" is a recent one. Beveridge has made perhaps the most constructive analysis of this particular problem with its several important aspects. An "irreducible minimum" of unemployment exists in all trades at all times, and this represents a loss of time by many, not the chronic idleness of a few. The average applicant to distress committees is not unemployable, but is a casual laborer.

This irreducible minimum of unemployment is increasingly important in production and is not due to an excessively rapid growth of the population. It constitutes the labor reserve, and is composed of "the men who within any given period are liable to be called on sometimes but are not required continuously." According to Beveridge the number of laborers who gather in any given center of the labor market will tend to equal the maximum number who may be able to obtain employment there. It may be that each individual employer maintains his own center of employment. If that be so, a separate reserve will be built up for each employer. On the other hand, if there is perfect mobility of labor within the industry, the reserve will tend to equal the maximum number employed in that industry at the busiest time of the year. Beveridge distinguishes two elements in the total reserve of labor for any occupation: those representing the element of friction in the labor market; and those "attracted and retained by the perpetual chance of work." The tendency toward the development of a labor reserve exists in practically all industries, but develops into its most vicious forms in the casual occupations, such as dock labor and agricultural work.

The nature of casual labor is vividly brought out by the record cards of seven typical laborers who applied for work at an employment office in Milwaukee.<sup>14</sup>

1. Patrick J. Flynn, 87 jobs during 23 months and 6 days, or one job in every 8 days.
2. Jos. Stein, 7 jobs during 5 months and 4 days, or one job in every 22 days.
3. Frank O'Neill, 16 jobs during 10 months and 4 days, or one job in every 19 days.

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<sup>14</sup> P. F. Brissenden and Emil Frankel, *Labor Turnover in Industry* (Macmillan, 1922), pp. 134-135.

4. Matt Brewer, 20 jobs during 10 months and 19 days, or one job in every 16 days.
5. Chas. Sommers, 72 jobs during 10 months and 19 days, or one job in every  $4\frac{1}{2}$  days.
6. Fred Miller, 59 jobs during 6 months and 8 days, or one job in every  $3\frac{1}{5}$  days.
7. William Thompson, 34 jobs during 12 months and 14 days, or one job in every 11 days.

*(b) Seasonal Fluctuations in Industry*

Seasonal fluctuations are a salient feature of modern industrial production. As a matter of fact it is the exception rather than the rule for a trade to maintain uniform activity throughout the year. For the decade ending in 1906 Beveridge estimated that in the building trades in Great Britain there was 80 per cent more unemployment during the slackest month than during the busiest; in the furnishings industry there was three and a half times as much unemployment during the slackest month as during the busiest; among the engineers there was 50 per cent divergence between the slackest month and the busiest; and among the printers the slackest month showed twice as much inactivity as the busiest.<sup>15</sup>

This kind of fluctuation is fundamentally due to changes in the weather, with the qualification that some of it can be attributed to social custom, as for example, the enormous trade during December which follows from the custom of exchanging gifts at Christmas time; although most of the variations attributed to social custom can be traced back finally to the weather. The less highly capitalized industries are apt to be the ones most affected by seasonal fluctuations. Capital tends to shun the industry that does not operate with a fair degree of continuity. Seasonal fluctuation is also characteristic of industries producing commodities that are subject to frequent changes in style, such as various types of clothing. However, there are also great variations in industries that might be termed non-style industries. For example, in the canning and preserving industry in 1919 the minimum number employed in March was only 18 per cent of the maximum number employed in September. Corresponding figures for other industries were: brick and tile manufacturing, 61.4 per cent; automobiles, 71 per cent; slaughtering and meat products, 80.4 per cent.<sup>16</sup>

<sup>15</sup> W. H. Beveridge, *Unemployment: A Problem of Industry* (Longmans, 1930), p. 30.

<sup>16</sup> U. S. Bureau of the Census, *Fourteenth Census of the United States*, vol. 10 (1920).

The following table shows the extent of seasonal variation in agricultural employment:

INDEXES<sup>17</sup> OF SEASONAL VARIATION IN AGRICULTURAL EMPLOYMENT,  
1925 TO 1936 (ALL WORKERS)

<i>Month</i>	<i>United States</i>	<i>Area of</i>	
		<i>Greatest Variation (Eastern Cotton)</i>	<i>Least Variation (Corn)</i>
12 month average .....	100	100	100
January .....	81	70	89
February .....	84	74	89
March .....	88	82	91
April .....	96	97	100
May .....	107	116	104
June .....	116	130	106
July .....	113	116	110
August .....	104	93	109
September .....	106	109	100
October .....	114	130	102
November .....	103	107	103
December .....	88	76	96
Percentage variation—high month from low month .....	43	86	24

Seasonal unemployment is not considered as serious as that resulting from other causes. For one thing many employers have attacked this problem, and with greater success than has attended their efforts to reduce the other kinds of unemployment. It appears that this particular evil can be remedied to a very large extent. What is needed is greater cooperation among the employers in each industry and perhaps some forceful encouragement on the part of the government. At least there seems to be a way out, which is more than can be said for some other kinds of unemployment. Then again, slack work resulting from seasonal fluctuation is fairly predictable. Men usually know about when they are going to be out of work and about how long. This makes some kind of adjustment possible. Sometimes a laborer can arrange to have another kind of work to turn to during the slack season. In other cases, notably in the building trades, wages are

<sup>17</sup> Bureau of Labor Statistics, *Bulletin No. 694*, vol. 1, p. 222 (1942).

adjusted so that relatively high pay is received during the busy season. Concerning this phase of the matter one student goes so far as to say, "Ultimately, therefore, seasonal fluctuation becomes a question not of unemployment but of wages."<sup>18</sup>

On the basis of this belief that because of fluctuations in the volume of employment jobs in seasonal industries should pay higher wages than comparable jobs in other industries, employers and unions, during the recent period of governmentally stabilized wages, requested special wage adjustments. However, the National War Labor Board refused to permit the wages to be increased above those paid in the previous season, except for adjustments permissible on the basis of increased cost of living, inter-plant inequities, substandards, etc. In other words, a wage increase could not be granted simply because the workers were employed in a seasonal industry.<sup>19</sup>

### (c) *The Business Cycle*

In many respects the fortunes of the laborer are affected more by the business cycle than by any other element in the industrial organization; and they are affected in a way that to him is mystifying and terrible. His utter helplessness before forces which are not only beyond his control but beyond his comprehension, which seem to descend upon him with all the pitiless indifference of natural phenomena, breeds in him a deep distrust and resentment toward the whole economic system. He sees an abundance of goods on the market during a period of depression. But those goods are not for him. With no job and no income he cannot buy them. It is a difficult situation for him to understand, and indeed for everyone else. The problem of the crisis has not been satisfactorily solved, although various explanations are constantly being offered.

The phenomena connected with the business cycle, although familiar, will bear rehearsing. It is important to remember that we are dealing with a cycle. At whatever point we begin our observation, the preceding phase must for the time being remain unexamined until the corresponding stages are reached in making the present circuit. The business cycle has three well-marked phases. There is the upward swing known as the period of prosperity; then the crisis, which is characterized by a sudden breakdown of the industrial and the credit pyramids; and finally the downward swing, called the period of depression.

<sup>18</sup> W. H. Beveridge, *Unemployment: A Problem of Industry* (Longmans, 1930), p. 37.

<sup>19</sup> *War Labor Reports*, Vol. 7, p. xxvi (1943).

The effects of the different phases of the business cycle upon the laborers vary widely, from cycle to cycle, from industry to industry, from laborer to laborer. No blanket statement could be made regarding the effects of general prosperity upon the laborers. Some forces tend to make their position worse, and others perhaps equal or more powerfully tend to better it. The period of prosperity is usually characterized by rising prices.<sup>20</sup> There is an expansion in the physical volume of trade which is to a certain extent cumulative. The increase is rather slow at first, but the active businesses must purchase goods from other industries and these in turn from still others, and the whole volume of business increases with greater and greater rapidity. This results in the employment of more labor, in enlarged borrowings, and in greater profits. The increase in family incomes means some increase in consumers' purchases, i.e., augmented sales by the retail distributors. These expand their orders to the jobbers and so on down the line until the manufacturers are reached and the process begins all over again. The growth in trade is apt to stop the fall in prices and start a rise. The increase in orders enables the various enterprises to hold out for higher prices for additional orders. As soon as prices begin to rise, more orders are apt to come in because purchasers are anxious to buy before they go still higher. The rise in prices spreads rapidly. Every upward movement brings pressure to bear upon somebody else to raise his prices because his income must increase if his outgo does. In most enterprises this expansion of business with resulting higher prices means more profits; for while sale prices are going up, thereby increasing gross income, costs are increasing less rapidly, since some costs such as labor costs usually lag behind, and others, contract costs, such as rent and some interest change only after a considerable lapse of time. These additional profits lead to greater investments, and greater investments mean a further expansion of the business. A general feeling of optimism prevails which is highly contagious. Every advance in price is an incentive to still further advances. Optimism and high prices tend to support each other.

Now what of the laborer in this period of optimism, high prices, expanding business? His wages are to a greater or less extent controlled by contract. During the period of the contract, which varies according to the nature of the business, the question of revision does not come up unless

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<sup>20</sup> That rising prices do not always continue throughout the period of prosperity was evidenced during a recent period of business expansion. According to the Bureau of Labor Statistics the wholesale price index was 101 in 1923, 98 in 1924, 104 in 1925, 100 in 1926, 95 in 1927, 98 in 1928, and 97 in 1929. There is much disagreement concerning the causes of this phenomenon, which, like other aspects of the business cycle, as yet remains largely unexplained.

he brings it up. In all probability some time will elapse before there will be a change in his wages, although the more powerful labor groups may succeed in getting an increase very soon after the increase in prices sets in. Any failure of money wages to keep pace with general prices means a decline in real wages. It may be that after the price movement has reached its peak, the laborers will bring their wages up to or even in some instances beyond it, but it is also possible that during a period of rising prices the laborer will suffer a decline in real wages.

Does the laborer lose during a period of inflation? Not necessarily. Other forces are at work, forces fighting on his side. The matter of employment is very significant in this connection. The laborer is interested in his wage rate, yes, yet he is far more interested in his total income. Before the period of expansion when the wage rate is low, and the price level low, he may seem at first glance to be in a better economic position than during more prosperous times. But the fact of the matter may be that he is out of a job. And in that event the fine figure cut by real wages in official reports will do him very little good. During a period of rising prices and prosperity there are usually jobs available for most able-bodied workers. It is possible for a man's real wage to be somewhat lower, but his total earnings larger, if now he has a job where before he had none. Or perhaps he is working full time where formerly part time was the rule. Or possibly he is receiving additional income in the form of overtime pay, bonuses, premiums, or shares in profits.

This conclusion must be applied to particular labor groups with great caution. Some laborers are less subject to unemployment than others. Some retain their jobs during periods of depression and others have relatively short periods of layoff, and for these groups a decline in real wages entailed by a prosperous period may not be offset by increased employment with its resulting increased earnings.

Another factor that is apt to react favorably to the laborer is that the period of prosperity is the most propitious time for organization. It is common knowledge that trade unions, on the whole, have increased in numbers and strength during periods of prosperity and have declined during periods of depression. In prosperous times labor is in great demand, profits are increasing, wages are lagging behind. There is every incentive to organize and the employer dare not be too antagonistic to such efforts because he needs laborers. And the laborer has the money to pay his dues! In so far, then, as trade unions benefit the laboring man, so far is a period of prosperity, which conduces to the organization of trade unions, beneficial to him.

It must not be assumed from the foregoing that wages always lag behind prices. Periods of prosperity vary in length and in intensity. If prosperous times are long continued, wages may, and in all probability will, catch up with prices and may even go higher. The demand for labor becomes greater and greater, employers are in a better and better position to pay higher wages, and the laborers through their strategic position and their more effective organization are able to demand them. It is obvious that if the degree of prosperity is very great, the laborer's position will be much improved. This became evident during the period of prosperity in the United States following the First World War.

The advance in prices cannot continue indefinitely. It is stopped by its own consequences. Rising prices lead to expansion of business, but not all prices increase with the same degree of rapidity. Prices that are more or less controlled by law, contracts, or custom lag behind the others. Some industries are largely dependent upon this type of price for their income, and these see their chances of profits seriously curtailed by a general rise in prices. There is also the extreme likelihood of a maladjustment of production. By its very nature the capitalistic system necessitates production for future sales. As the estimates of these future sales grow bigger, it is easy for an industrial organization dominated, for the time being at least, by a spirit of optimism to fall into the error of undertaking a greater increase in productive capacity than the market warrants. A period of hesitancy ensues. Investors manifest a reluctance to renew their contracts. Doubt as to the future of outstanding credits is aroused. Profits of some industries have already begun to decline. New enterprises experience difficulty in obtaining the necessary capital. Those already afoot find it harder and harder to procure the funds they need to complete their program of expansion or even to maintain what has already been set in motion. It appears generally that expansion has gone too far. Liquidation becomes necessary, and once begun, spreads rapidly. Contraction of business necessarily follows. Financial resources are conserved. New orders are withheld and as far as possible old ones are cancelled. Prosperity merges into a crisis, and the crisis may become a panic. This final disaster will take place if the process of liquidation involves the bankruptcy of key concerns, either financial or commercial.

The crisis phase seldom lasts long. But it is apt to be followed by an extended period of business depression in which decreased production, sporadic purchases, and unemployment are the rule. The period of depression is longer or shorter, depending largely upon the degree of maladjustment reached during the period of prosperity. Sooner or later processes of



readjustment begin by which, eventually, the depression is overcome. The decline in business operation is accompanied by a decline in prices. In time the costs of doing business are reduced. Stocks of goods left over from the period of prosperity become exhausted and consumption demands bring on a renewal of production. Investment demand becomes greater and the less timid enterprisers launch out anew. The upward swing has started.

If there is doubt as to the effects of the upward swing upon the wage earners, there is not an atom of doubt concerning the effects of the crisis and of the depression which follows it. The dominant characteristic of such a period is curtailment—curtailment of production, curtailment of loans, curtailment of purchases. Solvency must be maintained. Curtailment means a lessened demand for labor. New men are turned away, many now employed are laid off indefinitely, many others are put on part time. The causes of the slump may be enshrouded in mystery; but one, at least, of its results can be seen by a blind man, and that is unemployment.

And the capitalistic system must in fairness bear the brunt of the responsibility for cyclical unemployment. The crisis was brought on by a maladjustment in production. Capitalism by its very nature necessitates long-time production for a future market. When a hopeful view of things prevails, enterprises estimate the future market for their goods in the cheerful mood of the moment and produce accordingly. Wrong guesses are inevitable and maladjustment the result. It is not strange that socialists and other critics of the capitalistic system allot a generous share of their ammunition to the business cycle.

#### *(d) Technological Changes in Industry*

The nature of the influence exerted by technological changes in industry upon the employment of labor is still somewhat obscure. Some light has been shed on the question by the ceaseless controversy which has been going on for many years among labor leaders, employers, and economists, but as yet there is no general agreement. It was the industrial revolution that first brought the problem to the fore. There was no doubt in the minds of those first industrial workingmen concerning the effects of the introduction of machinery. Their reasoning may have been mistaken, but their attitude is none the less important on that account to anyone who wants to understand the workers' grievances. Writing in 1884, the editor of the *Potters' Examiner*, who was an influential leader of the potters' trade union, laid all the trials of the factory operatives to this one cause—machinery. "Machinery has done the work. Machinery has left them in rags and

without any wages at all. Machinery has crowded them in cellars, has immured them in prison worse than Parisian bastiles, has forced them from their country to seek in other lands the bread denied to them here. I look upon all improvements which tend to lessen the demand for human labor as the deadliest curse that could possibly fall on the heads of our working class, and I hold it to be the duty of every working potter—the highest duty—to obstruct by all legal means the introduction of the scourge into any branch of his trade.”<sup>21</sup>

The trade unions of today show no such uncompromising hostility toward machinery. No longer is it their general policy to resist its extension. Doubtless this revision of attitude is largely due to a realization that such extension is inevitable and that to resist it is to fight a hopeless battle. It represents a change of mind, let us say, rather than a change of heart. Trade unions and wage earners in general have not accepted the machine as an unmixed blessing. They have yielded, but reluctantly.

The usual contention of those who have been antagonistic to the machine, whether actively or passively, is that it is introduced as a labor-saving device. Work formerly done by one or more laborers is now done by the machine, in consequence of which the displaced laborers must either find work elsewhere or join the army of the unemployed. The countercontention is that the machine is not merely innocent of this charge but, as a matter of fact, actually creates employment. The displacements are apparent, not real; temporary, not permanent. The machine is brought in because it can produce particular goods more efficiently than hand-laborers can. There follows a reduction in manufacturing costs with resulting fall in price. This lower price enables the consuming public to buy more units of the goods and thus increase the demand for labor in the industry. Not only is there an increased demand for labor in the one industry primarily affected, but the entire laboring class, as well as all other consumers, are benefited by the lowered cost of the goods.

Both contentions take too simple a view of an exceedingly complex process. As in the case of all social processes, no absolute test can be applied. Upon examination we find that every great industry offers examples of apparent displacement. Kay's drop box and flying shuttle, invented in 1738, enabled one man to weave broadcloth instead of the two required before. Hargreaves' spinning jenny made it possible for one man to spin as much as 16 or 20 men had done before. It has been estimated that in 1917 one Owen's glass-bottle machine was capable of producing as much

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<sup>21</sup> Sidney and Beatrice Webb, *Industrial Democracy* (Longmans, 1920), pp. 392-393.

as 54 hand-blowers. There were 200 of these machines operating at that time, equal in capacity to 10,000 hand-blowers.<sup>22</sup> Even agriculture, which has been less mechanized than most of the other major industries, has felt the impact of the machine. One estimate is that modern machine methods in the United States produce a given quantity of the nine principal crops with about one-fifth as much labor as was required in 1830.

In 1913 the Western Union employed some 35,000 Morse operators. In 1928 it employed about 10,000 Morse operators, and many of these were working only part time—because of the new system of dispatch and receipt by typewriters directly connected with telegraph wires.<sup>23</sup> According to Professor George Barnett, who has extensively investigated the relationship between machinery and labor, the labor-saving devices which have been introduced into the stone trade, chiefly after 1900, did, in 1915, an amount of work that would have required the labor of 10,000 hand-cutters.<sup>24</sup> The iron and steel industry, the coal industry, the shoe industry, and others have all undergone a relatively rapid introduction of the machine with resulting increased production. The automobile industry is inconceivable without the machine. The laborers have watched these hordes of machines sweep over the fields and factories like an invading army, they have beheld the stupendous increase in efficiency of production which they have brought, and they have cried out against these monsters which have driven them from their jobs.

Advocates of the machine, on their part, direct attention to its universal benefits. They, too, point to the tremendous increase in production which has come in the wake of the new devices. And they also point to the growth of the population and to the improved standards of living. Support for both views is to be found in the history of the machine, and both are partially tenable.

Before delving further into the effects of machinery upon employment, we must take account of one aspect of the matter which is frequently overlooked. That is the individual laborer's point of view. The worker is mildly interested in the long-time effects of the machine, of course, but his genuine concern he reserves for something more immediate and practical. It may be possible to convince him completely that in the long run the

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<sup>22</sup> George E. Barnett, *Chapters on Machinery and Labor* (Harvard Press, 1926), pp. 88-89.

<sup>23</sup> D. M. Keezer, A. T. Cutler, and F. R. Garfield, *Problem Economics* (Harpers, 1928), p. 59.

<sup>24</sup> George E. Barnett, *Chapters on Machinery and Labor* (Harvard Press, 1926), p. 34.

machine will benefit the laboring class. It may also be possible to convince him that even now the class as a whole is benefited by the lowered prices of consumable goods; but if he as an individual has lost his job, if because of the machine his children are not getting enough to eat, these general benefits will leave him cold. He has a grievance against the machine and he will make that grievance felt. While his attitude may not be logical, it is altogether human.

The important changes in employment result from shifts in the demand for various products. This demand may be more or less elastic. The machine will be introduced only if it is believed that there will be a reduction in cost. In a competitive industry certainly, and probably in a monopolistic industry, this lowered cost will result in a lowered price. Inasmuch as the demand for practically all goods is more or less elastic, this lower cost will undoubtedly cause increased sales of the product. The question is, however, how great will this increase be? Obviously no quantitative test can be made because of the other factors involved. Labor cost is only one of the costs, although usually it is a major one. Labor cost may decrease and production increase, but there is one very powerful check to an indefinite increase in production, and that is that the supply of raw materials is probably limited. An extension of the use of a raw material not only reduces the available supply but will probably result in increased cost unless it is wholly or partially reproducible, while at the same time the labor cost in that industry goes down. A complete functioning of the law of diminishing returns has undoubtedly been delayed, particularly in the United States, by the application of machine-production methods to the extractive industries. The limitation is real, nevertheless. Prices cannot continue to fall indefinitely in proportion to the lowered labor cost brought about by the introduction of machinery. We reach this conclusion, it should be borne in mind, in taking a long-time view of the situation. In other words, even if one is interested solely in ultimate effects, he is forced to recognize that prices cannot always fall in proportion to the lowered labor cost resulting from the introduction of machinery.

Another factor which enters somewhat conspicuously is the relative elasticity of the demand for different goods. A lower price will undoubtedly cause increased sales of practically all goods, but the increases will be greater for some goods than for others. For example, the introduction of planers brought reductions in the price of building stone. In the latter part of the nineteenth century, Bedford stone was priced in Chicago at \$1.85 per cubic foot, whereas in 1913 it was only \$1.12½, but this reduction did not

result in an increased use of stone, owing chiefly to the active competition of concrete and terra cotta as building materials.<sup>25</sup>

The automobile shows the other side of the picture. Mr. Henry Ford conceived the idea that thousands of additional cars would be bought if the price were low enough, and proceeded to inaugurate a system of mass production, i.e., machine production on a large scale, with the well-known result, lowered costs, lowered prices, tremendous sales. Other articles respond less readily, but still respond, to a change in price. One student estimates, after careful study extending over a period of years, that in the case of sugar, an increase of 1 per cent in the price is associated with a decrease in consumption of only 0.5 to 1 per cent.<sup>26</sup> The usual way to state the generalization is that a change in the price of a necessity will not cause an appreciable change in the amount of the product bought, while a change in the price of a luxury will cause a relatively large change in the amount of the product bought.

This fact must be taken into account in considering the effect of the machine upon the displacement of labor. The introduction of the machine probably will result in a lowered unit cost of production. This lowered cost, at least in a competitive industry, will cause a fall in price. The fall in price brings about an increase in sales. The important question to the laborer is: will the increase in sales be sufficient to take up the laborers displaced by the machine? To this question no general answer can be given. The amount of increase in sales will depend upon the relative elasticity of the demand for the goods.

The advocate of the machine is undoubtedly right in his contention that the machine has benefited the laboring class in the long run. Exact statistical data are not necessary to prove this point. Let the doubting one take note of the astounding quantity and variety of commodities now produced for the laboring masses and compare them with the relatively slender list of things available to even the richest a century ago. The contrast should be convincing. Yet the laborer has a real grievance. He sees more and more goods being produced by less and less men. He desires the additional goods, but even those goods which he has will be taken away if he loses his job. His chance of benefiting is contingent upon his ability to keep his job. For example, from the middle of 1924 to the middle of 1927 factory production remained substantially unchanged, yet from January,

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<sup>25</sup> *Ibid.*

<sup>26</sup> Henry Schultz, "Statistical Law of Demand," *Journal of Political Economy*, 33:628 (Dec., 1925).

1926 to the fall of 1927 factory employment decreased about 7 per cent. During the first ten months of 1927, factory production was 107 (1923-1925 = 100), but factory employment was 95.1. In other words, 5 per cent fewer employees turned out 7 per cent more product. Thus a good many employees lost their jobs as a result of innovations in production. Although these men may be convinced that in the long run the laboring class as consumers will be benefited and although they may also be convinced that eventually even they themselves will probably be better off, the fact which stares them in the face is that they now are out of work, and that fact gives them so much to think about that the idea of immediate gains to their fellows or of faraway gains to themselves is apt to be crowded out.

Thus far we have been discussing the effect of machinery upon the number of laborers employed. There is also the effect upon the skill required. Skill is said to be replaced when the laborer is unable to sell his acquired skill at the rate of remuneration which it would have commanded had the machine not been introduced. Replacement of skill may not, we observe, result in unemployment, but at this point we are interested in the problem only in so far as unemployment is affected. Again we are faced with a complex problem.

The machine is introduced. The cost of production and the sale price are lowered. Sales increase tremendously and instead of there being a decline in the demand for labor there is actually an increase. Is the demand for the same kind of labor as before? This is a very important question to the worker. If it is not, then he loses his particular job and either becomes unemployed or with good luck finds a job elsewhere. It stands to reason that he probably cannot find one calling for the same kind of skill, for, if the machine which displaced him has not already been introduced into other plants, it very soon will be. He must either acquire a different kind of skill or join the ranks of unskilled labor. If he behaves in the customary manner, he will hold out for a job in his own line rather than accept unskilled work.

Professor Barnett states that the extent of the displacement of skill which will follow from the introduction of machinery depends upon five factors: the rapidity of introduction of the machine, the mobility of labor within the skilled trade affected, the effect of the machine in reducing the price of the manufactured article and thus increasing demand, the labor-saving power of the machine, and the extent to which the skill of the hand-worker is useful to the machine process. He concludes that these factors "combine in a great variety of ways to bring about great differences in the

displacement of skill suffered.”<sup>27</sup> For example, in the case of the linotype, skilled men were used as cooperant workers and as machine operators. There was also an increase in production. In the case of the stone planer, however, skilled workers were not used in connection with the machine process, and, furthermore, there was no increase in production. The introduction of the machine into the bottle industry brought disaster to skilled bottle blowers largely because there was practically no use for skilled workers in connection with the machine process, and also because of the rapid extension of the machine with its large displacing power into the different products of the hand-worker. These factors more than counterbalanced the great increase in production. Does the machine then displace skill and lead to unemployment? Again no categorical answer can be given. The answer will have to be determined in each case by the particular combination of factors involved.<sup>28</sup>

Fortunately for the student, although perhaps unfortunately for the skilled laborers, the problem is not as serious as it was when the machine was first introduced. For years before that time, the crafts had maintained themselves, and the craftsmen prided themselves upon the skill required to do their special kind of work. A large share of the world's work was done by men in possession of skill that it had taken them years to acquire. (The displacement of skill was a serious matter because it meant not only a possible loss of work but the loss of years of training and experience as well.) The craftsman was not prepared for displacement and to accept this new situation in which his skill had become practically a drug on the market was a process fraught with pain and difficulty. The contrast between his attitude toward his old job and his attitude toward his new unskilled job was far sharper than any such contrast would be today.

Now, with the machine already present to some extent in practically every industry, the laborers as well as the employers experience no particular consternation when it makes new inroads. Craftsmanship has largely broken down. No longer do men spend years learning a particular trade, and the vested interest being smaller, the pain is less acute when it must

<sup>27</sup> George E. Barnett, *Chapters on Machinery and Labor* (Harvard Press, 1926), p. 137.

<sup>28</sup> See R. J. Myers, "Occupational Readjustment of Displaced Skilled Workmen," *Journal of Political Economy*, 37:473-489 (Aug., 1929); Ewan Clague and W. J. Couper, "The Readjustment of Workers Displaced by Plant Shutdowns," *Quarterly Journal of Economics*, 45:309-346 (Feb., 1931); Isadore Lubin, *The Absorption of the Unemployed by American Industry* (Brookings Institution, 1929); Elizabeth Baker, *Displacement of Men by Machines* (Columbia University Press, 1933); Alexander Gourvitch, *Survey of Economic Theory on Technological Change and Employment* (Works Progress Administration, National Research Project, Philadelphia, 1940).

be relinquished. The laborer is more adaptable, realizing as he does that at any moment he may have to adjust himself to a new kind of work. No laborer is safe. Even the steam engineer, for years an aristocrat among the skilled laborers themselves, is threatened by electrification. It takes but a few days to train a motorman. All are awake to their danger. There seems to be little doubt that as far as employment is concerned the machine has proved a greater boon to the unskilled laborer than to his skilled brother.

*(e) Permanent Changes in Demand for Particular Types of Goods*

Sometimes there are permanent changes in the demand for particular types of goods that have an important bearing upon employment. Consumption is controlled to a large extent by fashion, and fashion is not based upon reason, except very incidentally. Changes in fashion often sweep across the country without warning and with incredible rapidity, bringing tremendous economic consequences in their train. Under our present system of production, goods are produced in anticipation of demand rather than in response to it, and so, when these sudden changes occur, some shops are sure to have large supplies of goods on hand that cannot be sold, and unemployment and idle capital result. In other shops men are working overtime in an effort to meet the unexpected demand for the goods that have fired the public enthusiasm. Not so many years ago woollen goods held the field. But cotton made serious inroads, only to be largely supplanted by silk; and now silk sees its supremacy threatened by rayon. The rubber overshoe which once held the field was pushed to one side by the cloth galosh. And what layoffs there must have been in the wig industry when artificial hair went out of style!

As significant as fashion in causing permanent changes in demand is the appearance of a new type of commodity that supplants another to a very large extent. For years it has been customary for the distribution of coal and ice to be handled by a single company, and this teaming together of goods consumed mainly in the summer and goods consumed mainly in the winter has eliminated a certain amount of seasonal unemployment. But suddenly the electric refrigerator makes its appearance and threatens to destroy the commercial ice industry altogether. The piano supplanted the parlor organ and now the radio has materially reduced the demand for pianos. The talkie movie has affected a number of industries. While still staggering under a body blow at the hands of the silent film, the "legitimate" stage found itself face to face with the still more menacing talkie. The harness-maker still plies his trade in a small way, but so low has the



automobile brought the demand for his product that harness-making has small glamour for the young man about to choose a career.

Many of the changes brought about by fashion cannot be designated as permanent with any degree of assurance. A recent return of hoop skirts and bustles should prepare us for anything and make us guarded in our statements. The changes mentioned, and many others that might have been cited, were at least lasting enough to cause a considerable amount of unemployment.

*(f) Maladjustments in the Labor Market*

There remains to be added to the list of things that cause unemployment the difficulty of bringing the man and the job together. Considered purely as a market, the labor market is one of the poorest in the present economic system. To be sure, it is questionable whether or not all the characteristics necessary for a good market would be desirable in the case of labor even if they could be obtained. In a perfect market the product is standardized. One share of common stock in a given corporation is the same as another share. An ounce of gold of a certain degree of fineness is the same as another ounce of gold of the same degree of fineness. The result is a national market, a world market, for these perfectly standardized products, which are conveniently sold by telegraph and cable. But the human laborer is incapable of any such high degree of standardization. One carpenter, even, cannot be the replica of another carpenter. Hence the buying—the hiring of the laborer—must be left to chance or become a strictly individual matter. Probably we should not try to standardize a human commodity. A strong society is one that is made up of persons with well-developed individualities, with pronounced tastes, ideas, and reactions to various stimuli. It is these differences, largely, that make the world an interesting place to live in. Machines have been subject to harsh strictures because of their tendency to standardize human beings until they become robots.

Another characteristic of a good market is sensitiveness to demand on the part of production: if more of the goods are desired, more are immediately produced. The various goods differ in the speed and accuracy with which they adjust themselves to the changing needs of the market, but probably no goods are less responsive than labor. The old iron law of wages, based upon the idea that the supply of labor really did adjust itself fairly well to the demand, has long since been exploded. People do not have children in order to produce laborers for the labor market, nor can

workers die off when there is a temporary oversupply. It is common knowledge that birth control is practiced least among those who need it most—the very poor. These are largely unskilled laborers of whom the supply, if we are to judge by the prevailing price, is more than adequate. The birth rate is lowest among the wealthy, a class from which business executives and professional men are mainly recruited. Relatively speaking, the price of these types of labor would warrant an increase in production. Economists have long recognized the existence of noncompeting groups, even in the United States where class and trade barriers are broken down with less difficulty than elsewhere. Probably it would be undesirable to have the labor market become perfect in this respect. Society would undoubtedly benefit by a reduction in the birth rate of the poor, but only the extreme materialist would have the need for one more laborer serve as the sole motive for bringing a child into the world.

Labor is notoriously immobile. Relatively high wages may prevail in certain sections of the country, but the laborer often does not go there, even though he knows this to be the case, because he has rooted himself too deeply in the soil of his own community. The relative immobility of labor is thus seen to be closely bound up with the stability and order which are necessary to society. Were the laborer's movements guided solely by the prices offered for his services, were he unhampered by that interest in his community and that devotion to his friends which conduces to permanence, one of the most valuable constituents of a well-ordered society, as well as of a satisfactory individual life, would have to be lacking in the multitude of persons who constitute the laboring classes.

We must not conclude that labor has been altogether lacking in mobility. There have been extensive movements of population which have been impelled chiefly by economic motives. An outstanding example was the coming of the southern European immigrants to the United States, even though this movement was prevented from constituting a faultless adjustment to market conditions by the fraud, corruption, and misrepresentation of steamship companies and contract agents.

In the United States, at least, facilities for bringing the laborer and the job together are still not adequate. In the first place, reliable information is difficult to obtain. The employer is anxious to have a plentiful supply of cheap labor on hand, and any information that he issues with regard to opportunities for employment is pretty apt to be colored by his own economic interest. Even trade-union journals are not altogether reliable. Local union members have no desire to see an abundant supply of labor flocking to their community, as a scarcity of labor means higher

wages for them. We had occasion not long ago to examine the entire files of the journal of a very large union. We found hundreds of letters urging laborers to stay away from a particular locality because jobs were scarce, but only *one* announcement that jobs were open in such and such a place. The federal government has as yet instituted no satisfactory method of disseminating reliable trade information. Private labor exchanges, which are guided almost solely by their own financial interests, are often worse than useless. Considerable improvement in the dissemination of job information has resulted from federal-state cooperation in the establishment of employment offices. Although the clearance of requests for workers among the states is far from perfect, it is far better than ever before. The work of the employment service during the war in getting workers to places they were needed shows what can be done to expedite the mobility of labor.

There are still other causes of unemployment, among which might be mentioned political changes and wastes in management, but these are less significant than those that have already been considered, and therefore we shall pass them by.

## CHAPTER II

### THE LENGTH OF THE WORKING DAY

#### THE PROBLEM

STATISTICS with regard to strikes are not altogether reliable, but enough is known to indicate quite definitely that the length of the working day has been a chief cause of industrial friction, perhaps second in importance only to the wage controversy. From the very beginning of trade-union organization hours have played a leading role in the labor struggle. Before 1827 the questions at issue were solely those of wages and hours of labor. The second strike on record in this country was fought in 1791 by the Philadelphia house carpenters for the ten-hour day. Of the numerous strikes of this period one of the most notable was the unsuccessful attempt of the Boston shipwrights and calkers to reduce their hours from fourteen to ten.

The question of hours has receded but slightly from the foreground with the passing of time. The great steel strike of 1919-1920 was primarily a protest against the twelve-hour day. The threatened strike of the four railroad brotherhoods of 1916, which led to the enactment of the Adamson Act, was to enforce a demand for a basic eight-hour day. The numerous difficulties in the coal industry have to a great extent revolved around the question of the length of the working day. Figures seem to indicate, however, that the hour question is a somewhat less frequent cause of friction than it was formerly. Between 1881 and 1906, according to the United States Commissioner of Labor, it was a factor in 25 per cent of the strikes, between 1916 and 1921 in only 16 per cent. In both periods, according to the government figures, it ranked second to the issue of wages.<sup>1</sup> By 1945, however, hours of labor as a cause of strikes could be considered minor perhaps because a federal law had reduced hours of labor to forty per week in most large industries.

\* It cannot be said that the problem of hours is a direct product of our industrial civilization, for men work long hours under the agricultural régime, but it probably can be said that the introduction and development of the machine have made it more acute. Agricultural labor, although sometimes performed under conditions of great misery, at least was carried on

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<sup>1</sup> *Twenty-first Annual Report of the U. S. Commissioner of Labor* (1906).

largely in the open air. The early craftsmen did work that was in a considerable measure interesting and that gave some outlet to their creative impulses. The coming of the factory with resulting crowded conditions both in the factory itself and in the dwellings of the laborers, and the breaking down of the crafts by the machine to a point where a great part of the work done has become simply the monotonous repetition of a few motions—these changes have greatly aggravated the problem of working hours.

From the worker's point of view, as well as from that of society as a whole, there are two major aspects to the problem. First, there is the physical side. What effect does a long working day have upon the worker's health? This is a question which is obviously of the utmost importance both to the worker himself and to the community in which he lives. Then there is the economic side. How is the length of the working day related to the laborer's economic well-being? For years workers' organizations have contended that a shorter working day means more employment. This idea was particularly prevalent during the recent depression and was advanced not only by workers and their organizations but also by many who were prominent in political life. One of the important aims of the N.I.R.A. was to increase employment and this was to be accomplished mainly by means of shortening the working day and the working week and by increasing wages. In fact it can almost be said that the sole argument advanced in support of decreasing the length of the working day during the depression years was to increase employment. As business conditions have improved this particular argument has lost some of its force and greater emphasis is being placed upon the health and safety aspects. Another economic question concerns the effect of the length of the working day upon efficiency of production. As will be noted later, it is an important part of the standardization policy of trade unions; and this whole standardization policy is criticized on the ground that it reduces efficiency of production.

#### SOME FACTS

Although there is much still to be desired with regard to arriving at a satisfactory length of the working day, much has already been accomplished. The early days of the industrial revolution in England witnessed conditions that probably do not exist anywhere today. The normal working day in Manchester and its environs is 1825 varied from 12½ to 14 hours. In a cotton mill in Lancashire, where many children were employed, the regular

working hours were from 5 a. m. to 8 p. m., and, with the exception of half an hour at 7 a. m. for breakfast, and half an hour in the middle of the day for dinner, the employees worked continuously. Work from 3 a. m. to 11 p. m. was not unknown. At one mill, called "Hell Bay," for two months at a time the laborers not only worked regularly from 5 a. m. to 9 p. m. but twice each week toiled all through the night as well.<sup>2</sup> Conditions in the mines were, if possible, worse. Children began to work in the mines at five, six, or seven years of age, and no distinction was made between girls and women and men and boys. They toiled side by side, half clothed, some even stark naked, from 12 to 14 hours of the 24, and these often at night.

Although early industrial conditions in America were not as bad as in England, a long working day was the rule rather than the exception, the custom being to work from sunrise to sunset. The early movements for a shorter working day were ten-hour movements. In 1825 the Boston house carpenters demanded the ten-hour day and upon being refused went out on strike, almost 600 journyemen carpenters participating. This strike, incidentally, failed. The period 1820 to 1840 was marked by many strikes for the same objective. The ten-hour day was obtained in New York City in 1829.

A general demand was made in 1835, beginning in Boston and spreading as far south as Baltimore. In Boston the carpenters led the way and were joined by the masons and stonecutters. In Philadelphia not only the building trades, as in Boston, but most of the mechanical trades participated, as well as some common laborers. In fact the movement was started by the coal heavers, common laborers working on the Schuylkill docks. It met with considerable success. By the close of the year 1835, ten hours had become the standard workday in most cities for mechanics who worked by the day. One exception was Boston, where only the plasterers succeeded in reducing their hours. An interesting characteristic of the times was that the city and national governments by no means led the way in the shorter-hour movements. Usually where the trade unions were successful, the municipality would lower the hours of its employees, as for example in Philadelphia, but where they were not, the city would hold to its long workday. The federal government itself ran counter to public sentiment, maintaining the longer day even after the trade unions had succeeded in bringing their hours down.

The eight-hour movement followed the ten-hour movement but did not actually start until the seventies. The big impetus came in 1886 when the

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<sup>2</sup> J. L. and Barbara Hammond, *The Town Labourer* (Longmans, 1917), p. 159.

eight-hour day obtained an important place in the program of the American Federation of Labor. The proposal for a general eight-hour movement was at first received very coolly by the affiliated trade unions. The 1884 convention adopted a resolution to the effect that "from and after May 6, 1886, eight hours shall constitute a legal day's labor." At the same time there was a proposal that the Federation should dispense strike benefits in connection with the eight-hour campaign. This called for an amendment to the constitution which the convention decided to submit to the affiliated organizations for a referendum vote by their membership. By the time the convention met in 1885, only the carpenters' union had voted upon the amendment. Shortly after the convention the cigarmakers voted favorably upon it, but the German-American typographical union was the only other national trade union to follow suit.<sup>3</sup>

Nevertheless, a somewhat general strike for the eight-hour day, with the Knights of Labor cooperating, began on May 1, 1886. Although prosecuted enthusiastically at some points, it was not a great success, owing in part to the bomb explosion in Haymarket Square, Chicago. Bradstreet's estimation was that 340,000 men took part in the movement; 190,000 actually struck, 42,000 of them successfully, and 150,000 secured shorter hours without a strike. Most of these latter lost the concession they had gained. Bradstreet estimated in January, 1889, that those actually retaining it did not exceed 15,000. The next important movement for the eight-hour day occurred in 1888, when the Federation convention declared that a general demand should be made on May 1, 1890. The carpenters were selected to inaugurate the movement and the choice proved to be a good one. The union claimed to have won the eight-hour day in 137 cities. The miners' union, chosen to follow, did not make the attempt at this time. By 1891 the eight-hour day had been greatly extended, covering all the building trades in Chicago, St. Louis, Denver, Indianapolis, and San Francisco.

This rapid extension has continued until at the present time the eight-hour day prevails in practically the entire building industry. The building trades are now trying to obtain the forty-hour week and with considerable success. The eight-hour day has become quite general in the bituminous coal industry. Sixteen states require it in the coal mines, but most of the principal coal-mining states have failed to pass effective eight-hour laws. The anthracite miners obtained a general acceptance of it in 1916. A rather general movement for the eight-hour day began in 1915, and accord-

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<sup>3</sup> John R. Commons, *History of Labour in the United States* (Macmillan, 1921), vol. 2, p. 377.

ing to the United States Bureau of Labor Statistics, between 1915 and 1919 the working hours of 3,462,000 persons were reduced to eight. The garment trades, the lumber industry in the northwest, newsprint paper, shipyards, and slaughtering and meat packing were among the important industries placed on an eight-hour basis during this period. The movement reached its height in 1920. Following the depression of that year a reaction set in, but renewed business activity brought on a revival of effort. According to the National Industrial Conference Board, in 1914 the average nominal working week in 25 manufacturing industries studied was 55 hours long. In 1920 it was 50 hours, and in the last quarter of 1927 it was 49.5 hours.

According to the *Census of Manufacturers*, from 1909 to 1929 an increasing proportion of wage earners obtained a working week of 48 hours or less and a decreasing percentage were forced to work 60 or more hours per week. In 1909 there were but 7.9 per cent of the wage earners in manufacturing working 48 hours or less per week while 39.2 per cent were working 60 or more hours. In 1919 these percentages were 48.7 and 12.1, respectively. By 1929 less than 8 per cent were working 60 or more hours while a little more than 45 per cent had obtained a working week of 48 hours or less.<sup>4</sup>

Even before the N.I.R.A. and more recent federal legislation, the five-day week had been making some real headway. In 1932 it was found by the United States Bureau of Labor Statistics to be in force in 5.4 per cent of the establishments, including 8.4 per cent of the employees, that were covered by the Bureau's comprehensive survey.

One of the more important factors, if not the most important, in retarding the movement for the shorter workday is the continuous industry. This is the type of industry that operates day and night without interruption, sometimes seven days a week, and is therefore incapable of a gradual reduction of working hours. More than one crew is, of course, needed. If there are two crews, each must work twelve hours. In order to bring about any reduction at all, an entire additional crew must be engaged and the hours must be reduced to eight. Any further reduction would have to be from eight to six. Naturally these drastic reductions must come more slowly than would more gradual ones. Important continuous industries are iron and steel, sugar refineries, chemical plants, coke ovens, ice factories, paper and pulp mills, and public utilities.

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<sup>4</sup> U. S. Bureau of the Census, *Census of Manufacturers*, 1914, 1923, 1929.



According to figures compiled by the United States Bureau of Labor Statistics, 40 per cent of the employees in the iron and steel industry were working 72 hours per week or more in 1910. That means twelve hours a day for six days in the week. About 20 per cent were working 84 hours a week, twelve hours a day for all seven days. This industry has been widely condemned for its long hours and finally public opinion has prevailed. In August, 1923, the American Iron and Steel Institute, representing the leading steel manufacturers, announced its decision to eliminate the twelve-hour shift in favor of the eight-hour shift.<sup>5</sup>

Average weekly working hours have been considerably reduced since 1929, first as a result of the various industrial codes under the National Industrial Recovery Act and later because of federal wage and hour legislation. Practically all the codes, when first approved, specified a maximum of forty hours and many of them later called for a still shorter one. The federal wage and hour law provides for a basic forty-hour week at the conclusion of which overtime must be paid for additional work. Recent figures computed by the Bureau of Labor Statistics illustrate to what extent federal regulations have been effective. For all manufacturing industry the average hours worked per week between 1932 and 1940 did not reach 40, but ranged from 34.1 hours per week in 1934 to 39.1 hours per week in 1936.<sup>6</sup>

By 1941 the rearmament program had brought increases in the average hours worked per week and by April, 1942, the average worker was spending 42.5 hours per week in the factory. Employees of defense industries were actually working 47 and 48 hours per week.<sup>7</sup>

During the war years the average working hours per week in many industries was 48. In fact, a great many industries were required to establish a 48-hour week under the regulations of the War Manpower Commission. Under the law, however, all hours worked in excess of 40 in any one week were paid for at the rate of time and one half.

On the railroads there can be no uniformity in hours, particularly where train service is concerned. In 1907 Congress passed a law, which is still effective, limiting the hours of men in train service to sixteen. The reason the maximum was fixed so high was to allow for the emergencies

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<sup>5</sup> In the code for the iron and steel industry, approved August 19, 1933, the maximum hours were set at forty per week for any six-month period, or forty-eight for any one week.

<sup>6</sup> U. S. Bureau of Labor Statistics, *Hours and Earnings in the United States*, 1932-30 with Supplement for 1941, *Bulletin No. 697*, p. 48 (1942).

<sup>7</sup> U. S. Bureau of Labor Statistics, *Labor Information Bulletin*, vol. 9, p. 6 (June, 1942).

which are bound to arise in this industry. According to reports of the Interstate Commerce Commission, which is charged with the enforcing of the law, from 1916 to 1920 the sixteen-hour limit was exceeded 522,000 times. Since this figure includes only those instances in which the limit was passed and not the numerous ones in which it must have been approached, it can readily be seen that hours were still excessive in the railroad industry in 1920. The Adamson Act establishing the basic eight-hour day on the railroads was passed in 1916, but this law pertains chiefly to the method of computing wages. Considerable progress in the reduction of hours has been made, however, since 1916. In that year the average number of hours per week per employee was 61. In 1920 this figure had been reduced to 52, in 1927 to 48. In 1932 the average number hours per week on Class I steam railroads was 39.1. By 1940, however, the same men were working 44.1 hours per week.<sup>8</sup>

#### PHYSICAL ASPECTS

The problem of hours is partly one of physical well-being, for there is undoubtedly a relationship between the number of continuous hours of work and the worker's health. Health is the one thing which the worker cannot get along without. He simply cannot afford to be sick. Yet we know that modern industry has added greatly to the amount of illness among working men.

There may be little question that a relatively large amount of illness exists among working men, but there is plenty of disagreement as to its causes. Many contend that fatigue resulting from overstrain is a major cause. This view was forcibly presented by Frankfurter and Goldmark in their brief for the state of Oregon in the case of *Bunting v. Oregon* (1917) before the United States Supreme Court. They said that: "More recent investigations show that not only in the dangerous trades, but in all industries, a permanent predisposition to disease and premature death exists in the common phenomena of fatigue and exhaustion. This is a danger common to all workers, even under good working conditions, in practically all manufacturing industries, as distinguished from the specially hazardous occupations.

"In ordinary factory work, where no special occupational diseases threaten, fatigue in itself constitutes the most imminent danger to the health

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<sup>8</sup>U. S. Bureau of Labor Statistics, *Hours and Earnings in the United States, 1932-40* with Supplement for 1941, *Bulletin No. 697*, p. 201 (1942).

of the workers because, if unrepaired, it undermines vitality and thus lays the foundation for many diseases."<sup>9</sup>

Frankfurter and Goldmark supported their position with testimony offered by a number of leading medical experts. We give some portions of this to indicate the general position taken.

Dr. G. M. Kober in the Bulletin of the U. S. Bureau of Labor Statistics states, "One of the important predisposing causes to disease is overwork or fatigue, because the accumulation of waste products in the blood, from muscular wear and tear, together with expended nervous energy, combine to render the system more susceptible to disease. Excessive work is inimical to health, and long hours and hard work are calculated to diminish the general power of resistance, and thus bring about physical deterioration."<sup>10</sup>

In a statement prepared by W. G. Thompson, M.D., Professor of Medicine in Cornell University, we find the following: "Fatigue of muscles, nerves and the mind constitutes an important factor in predisposition to disease among many classes of workmen and operatives. Its effects have become very noticeable in recent years, owing to the practice of 'speeding up' or increasing the output of work under contracts where time saving is an essential matter."<sup>11</sup>

Professor Angelo Celli, Director of the Institute of Experimental Hygiene at Rome, states, "Fatigue also predisposes to infectious diseases. Typhoid, for instance, is much more easily taken after excessive and exhaustive labor. It has even been proved that the poison of fatigue predisposes to disease individuals who might be able to resist infection under other circumstances."<sup>12</sup>

Certain economists add their testimony. In a statement prepared for the National Conservation Commission, Professor Irving Fisher states, "A reduction in the length of the workday would be a chief means of improving the vitality of workmen, as well as the worth of life to them. The fatigue of workmen is largely traceable to their long workday and serves to start a vicious circle."<sup>13</sup>

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<sup>9</sup> Felix Frankfurter and Josephine Goldmark, *The Case for the Shorter Work Day* (National Consumers' League, 1916), vol. 1, pp. 63-64.

<sup>10</sup> *Ibid.*, vol. 1, p. 65.

<sup>11</sup> *Ibid.*, p. 72.

<sup>12</sup> *Ibid.*, pp. 83-84.

<sup>13</sup> *Bulletin of the Committee of One Hundred on National Health*. Prepared for the National Conservation Commission by Professor Irving Fisher of Yale University (1909).

John A. Hobson writes, "That over-fatigue connected with industry is responsible for large numbers of nervous disorders is, of course, generally admitted."<sup>14</sup>

Some, on the other hand, are inclined to question the importance of fatigue as a cause of disease. Mr. H. M. Vernon writing in 1921 states that "The effects of exposure to the weather and of resting from work when in a state of perspiration are more potent causes of sickness and death than the fatigue incident to hot and heavy work."<sup>15</sup> Frankfurter and Goldmark present considerable evidence to show that excessive fatigue leads directly to many mental and nervous disorders, but Dr. W. A. White believes that the connection, if it exists at all, is often very remote. He states that hysteria is a purely mental disease and that work "could not be conceived to be a cause in any true sense." Similar comments are made by Dr. White with reference to other mental and nervous disorders.<sup>16</sup>

Although Mr. Vernon holds that the relationship between fatigue and disease is not as close as some try to show, he presents some rather interesting evidence that in certain respects supports the general position taken by Frankfurter and Goldmark. In an investigation made in an ordnance factory in Great Britain it was found that when the men were working 63½ hours per week they lost 7 per cent of their time because of illness, whereas when the hours were reduced to 54 a week they lost only 4 per cent. In the same factory it was found that when the women were working a 54-hour week they lost 4.3 per cent of their time from sickness, but that when hours were reduced to 44½ they lost only 2.8 per cent. Mr. Vernon also gave the results of an examination of 3000 men and boys in eight munition factories in Great Britain. It was found that 31 per cent of the men 41 years of age and over doing heavy work were in subnormal health, whereas only 21 per cent of those working less than 70 hours a week were in subnormal health. Eleven per cent of the boys working more than 60 hours a week were in subnormal health, whereas only 5 per cent of those working less than sixty hours were in subnormal health.<sup>17</sup>

Testimony as to the degree of relationship between fatigue and illness is conflicting, and it is clear that further studies are necessary before positive conclusions can be reached. Factors influencing illness are so numerous that it is easy to exaggerate the effects of any single one. The people who

<sup>14</sup> John A. Hobson, *Work and Wealth: A Human Valuation* (Macmillan, 1914), p. 67.

<sup>15</sup> H. M. Vernon, *Industrial Fatigue and Efficiency* (Dutton, 1921), p. 178.

<sup>16</sup> W. A. White, *Principles of Mental Hygiene* (Macmillan, 1917), pp. 226-229.

<sup>17</sup> H. M. Vernon, *Industrial Fatigue and Efficiency* (Dutton, 1921), pp. 7, 168-169.

work the longest hours are apt to be the same ones who live in the most wretched way and in the most congested sections of the large cities. The factories in which the hours of work are longest are often the ones in which least attention is paid to sanitary conditions. Poverty, congested living quarters, and unsanitary working conditions contribute greatly to the prevalence of illness among the working class. Just how much of this illness is due to any particular cause it is impossible to say. But in the light of the evidence that has been presented there seems to be no doubt that fatigue does contribute in some measure to illness. And long hours of work obviously result in excessive fatigue.

Fatigue is known to be due to the presence in the blood of toxic substances which are produced by continuous mental or physical exertion. What makes its dangers so great is that often they are not perceived. The laborer knows when he has a common cold, he knows or can find out whether he has smallpox. He also knows when he is tired, but he does not know that as a result of this his powers of resistance to infections are being undermined, that indeed he may already be in the clutches of a devastating disease.

There is even less agreement concerning the relationship between fatigue and industrial accidents than concerning the relationship between fatigue and illness. In preparing their *Bunting v. Oregon* brief, Frankfurter and Goldmark made a comprehensive study of the relationship between fatigue and accidents. They concluded: "After fatigue has set in, the faculty of attention is in inverse ratio to the duration and intensity of work undertaken. Attention is always accompanied by a sensation of effort, and the fatigue of attention is due to the continuation of the efforts and the difficulty of sustaining them.

"... When the brain is fatigued, attention flags and reaction time is retarded. Hence, after overexertion, fatigued workmen are subject to increased danger when reaction time is slowed and attention at its minimum."<sup>18</sup>

In their brief they gave the results of an investigation made by the U. S. Bureau of Labor Statistics covering factories employing in the aggregate over 14,000 persons. The investigators found that the largest number of accidents occurred in the middle of the morning and the next largest in the middle of the afternoon. They concluded: "It is safe probably to offer as a provisional hypothesis that the immediate cause of variation in the accident rate through the hours of the day is the varying rate of

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<sup>18</sup> Felix Frankfurter and Josephine Goldmark, *The Case for the Shorter Work Day* (National Consumers' League, 1916), vol. 1, p. 392.

activity. Fatigue then comes in as an important secondary factor, serving sometimes to increase the accident rate, sometimes to decrease it."<sup>19</sup>

In an independent study Miss Goldmark reports an examination of 15,000 accidents which shows that the largest percentage occurs between 9 a.m. and 10 a.m., the next largest between 3 p.m. and 4 p.m.<sup>20</sup>

It is not at all clear from these data that fatigue does contribute greatly to the number of accidents. The data show for one thing that the number is usually greater in the morning than in the afternoon. We would not expect, of course, that the rate would increase straight through the day. The rest during the noon hour would tend to reduce the number occurring from 1 p.m. to 2 p.m. below the number reached during the last hour of the morning. But if fatigue were a major cause, it would certainly seem that the number of accidents in the afternoon would be greater than that in the morning. Is there some significance in the fact that the accident rate is smaller just before closing time both at noon and at night than during most of the other hours? May it not be that the lower accident rate during those hours is largely due to a greater alertness arising from the expectation that the whistle will soon blow? It may be that listlessness is largely responsible for accidents. Listlessness is apt to be greatest in the middle of the morning and in the middle of the afternoon when the initial alertness has been worn off and the whistle is still some distance away.

Most of the available data show more accidents in the morning than in the afternoon. Mr. Vernon gives figures for a number of British industries in which the accident rate is slightly greater in the afternoon than in the morning, the exact ratio being 1.01, but concludes that "in ordinary industries under normal hours of work there is no good evidence that the rise of accidents observed during the work spells is due to fatigue."<sup>21</sup> We do not, however, consider the fact that accidents are usually greater in number in the morning than in the afternoon to be conclusive evidence that fatigue does not cause or help to cause accidents. We have just ventured the suggestion that accidents may be due largely to listlessness, which in turn may be caused by overstrain and fatigue. The accident rate is smaller in the afternoon and particularly small in the last hour. It is quite possible that the nearness to quitting time acts as a stimulant, counteracting the worker's listlessness and making him more alert even than he is in the morning, when

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<sup>19</sup> *Ibid.*, vol. 1, p. 375.

<sup>20</sup> Josephine Goldmark, *Fatigue and Efficiency* (Russell Sage Foundation, 1912), p. 76.

<sup>21</sup> H. M. Vernon, *Industrial Fatigue and Efficiency* (Dutton, 1921), pp. 185-186.

six o'clock looks very far away. But because a stimulant temporarily overcomes the effects of fatigue, it does not follow that the fatigue is not there. One can work far into the night with a fair degree of alertness if he resorts to the use of strong coffee.

Recent studies of the Bureau of Labor Statistics throw some interesting light upon the relation between hours worked and accidents. After studying the experience of twelve plants working long hours because of war production, Mr. Kossoris concludes, "In the absence of effective safety programs, work injuries tended to occur relatively more frequently under longer hours. In one plant they occurred only one-third as frequently when the daily hours were reduced from ten to eight. When plants had good, active accident-prevention programs, the lengthening of hours did not bring about a disproportionate increase in work injuries."<sup>22</sup>

From the data presented it seems clear that fatigue contributes to accidents in some degree, but there are so many factors involved and so little, relatively, is known about fatigue that it is impossible to determine exactly what that degree is. We shall have to know more about the nature of fatigue before any precise conclusions can be reached. This is one of a number of points at which the economist is forced to stop and wait for the psychologist to tell him what he needs to know.

It would be easy to examine the facts with regard to the length of the workday, noting that there has been a general decrease in the number of hours worked, and to conclude that we have made considerable advance in preventing the physical evils arising from excessive fatigue. This would be to overlook a rather important consideration—namely, that concurrently with this advance the nature of industrial work has undergone radical changes. The intense strain which characterizes contemporary industry is a relatively new thing. Owing to the greatly increased use of the machine, the muscular energy required of the industrial worker is less today than it ever has been, but the nervous strain is probably much greater. In considering the length of the working day, therefore, note must be taken of three important characteristics that seem to be inseparable from machine-driven industry—speed, monotony, and noise.

↓ Machinery costs a good deal of money, and the capitalist, having made a large investment with resulting heavy fixed charges, is naturally interested not only in continuous operation of his plant but in speedy operation as well. The workers must constantly be on their guard against attempts on his part to speed up the process of production. One of the prime causes

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<sup>22</sup> "Studies of the Effects of Long Working Hours," U. S. Bureau of Labor Statistics, *Bulletin No. 791-A*, p. 4 (Oct. 17, 1944).

of industrial friction has been just this conflict of interest—the employer's determination to increase production pitted against the laborer's dogged resistance to all speeding-up processes. Most unpopular among his fellow workers is the fast pace-setter.

✓ Sometimes the machine is its own driver and the worker is practically harnessed to it. A leading official of the cotton-spinners' union in England was asked why he objected to time wages. He replied that it was the piece-work system of wage payment that had saved the industry from the evils of sweating. The work of a cotton spinner, he explained, varies in intensity according to the number of spindles which he has to attend to and the speed at which the machinery runs, conditions over which he has no control. Under the time method of payment he found the machine being speeded, but under the piece-work system he received the benefit of any speeding and the employer was less interested in speeding-up processes. Yet on the whole, the piece-work system of payment has undoubtedly contributed to greater speed in industry. It is human nature to try harder for speed if you yourself are going to reap the benefit. Numerous efficiency schemes have been devised which on their face seem plausible enough to the worker as being calculated to increase production with benefits to him, but which, when analyzed, often resolve themselves into methods of speeding up that will most certainly tear down his vitality. Almost any industry will furnish an example.

¶ As long ago as 1776 Adam Smith in a famous description of the manufacture of pins set forth the advantages of division of labor. This description is frequently brought forward in support of division of labor, the extension of which, of course, is to blame for the greater strain in industry resulting from speed, monotony, and noise. Those who borrow thus from Adam Smith are apt to forget or to ignore the fact that he also wrote: "The man whose whole life is spent in performing a few simple operations, of which the effects are perhaps always the same, or very nearly the same, has no occasion to exercise his invention in finding out expedients for removing difficulties which never occur. He naturally loses, therefore, the habit of such exertion, and generally becomes as stupid and ignorant as it is possible for a human creature to become. . . . His dexterity at his own particular trade seems, in this manner, to be acquired at the expense of his intellectual, social, and martial virtues. But in every improved and civilized society this is the state into which the labouring poor, that is, the great body of people, must necessarily fall, unless government takes some pains to prevent it."<sup>23</sup>

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<sup>23</sup> Adam Smith, *The Wealth of Nations* (Dutton, 1910), vol. 2, pp. 263-264.



A certain agency organized to handle industrial problems for private firms was called in on a strike in a New England textile mill.<sup>24</sup> The experts, after studying the situation, informed the firm that the trouble was "in hiring people with too much brains to do brainless work", and offered to furnish a sufficient number of morons to take the place of the too-intelligent ones. The substitution was made. Another organization whose business is to make a scientific study of personalities with reference to their genetic record made a study of the large turnover in one of the departments of a certain plant. They reported that "the girls who were discharged were the thinking girls or the dreaming girls, the girls who had a mental equipment, and those girls could never reach the minimum standard because soon after they started the motor activity their mind tired of that and a thought came in or a dream entered into their mind and their activity was slowed up because of that thought or dream. The persons they needed in that plant were morons, as the morons did stick to the job and did give the production required."<sup>24</sup>

It will be recalled that the U. S. Bureau of Labor Statistics concluded that the immediate cause of variation in the accident rate was found to be the varying rate of activity. There seems to be little question but that increasing speed of operation will increase the probability of accidents. The United States Industrial Commission reported in 1902: "It should be remembered that a man's industrial life may be shortened not only by hastening his absolute deterioration, but also by raising the standard of efficiency. As the pace increases, the number of men that can maintain it diminishes. Men a little past the prime of life, who would be able for years yet to do effective work, find themselves forced out of the industrial field because they are no longer capable of the intense application and the rapidity of movement which existing standards require."<sup>25</sup>

Some idea of the speed and the monotony of modern industrial work can be obtained from the following instances. In the making of hinges, a woman lifts a half-formed hinge, places it in the bending machine and quickly withdraws her hand, and repeats this series of movements at the rate of 50 times a minute, or 30,000 times a day. In making the tops of tin cans, the operator presses the lever of a foot press 40 times a minute, 24,000 times a day. A telephone operator can receive, answer, and make the proper connections for from 200 to 300 calls in an hour. In the making of women's clothing one operator in an hour will tuck 250 yards of lawn,

<sup>24</sup> Ethelbert Stewart, "Industrialization of the Feeble-minded," *Monthly Labor Review*, 27:7-11 (July, 1928).

<sup>25</sup> *Report of the United States Industrial Commission*, vol. 19, p. 818 (1902).

another will hem 400 yards of voile, another will make 1000 buttonholes, and still another will sew on 800 buttons. In one day a worker can insert the eyelets into 4000 shoes; another can trim the superfluous leather from the uppers of 5200 shoes. It is said that in the process of manufacture a single shoe passes through the hands of more than 100 workers. In weaving, one woman must supervise 16 to 24 looms; in sewing, a single girl watches intently the 12 jumping needles of her power machine.<sup>26</sup>

In 1929 the Industrial Fatigue Research Board of Great Britain issued a report which emphasizes one of the worst effects of modern industry upon the workers, namely boredom. Experiments reveal that unless perfect mechanization is achieved in repetitive processes, any wandering of attention may be harmful either to the worker or to the machine. It follows that the worker's natural tendency to allow his attention to stray is constantly being restrained, with the result that a state of boredom ensues. It is also thought that repetitive work has a dulling effect upon the mentality. Desires and interests which may have been present before, become weakened by the routine and the operative begins to live along the line of least resistance. The report states: "Knowing that she has to remain in the factory during the scheduled hours of work, and aware that many others are in the same position, the operative philosophically resigns herself to the inevitable, and is less disturbed by conflicting desires and thoughts. In this way she is better able to endure the conditions of work and to maintain a favorable attitude toward the task. Thus boredom is reduced by adaptation to working conditions, but the process of becoming adapted is probably not achieved without some personal sacrifice and cost."<sup>27</sup>

✓ Noise is another concomitant of modern industry which is detrimental to the worker's health. Noise is present in almost every industry and there seems to be no limit to the quantity. Although the workers seem to become accustomed to it, studies reveal that it has, nevertheless, its harmful effects. Among 75 smiths employed in manufacturing railroad equipment, it was found that 30 had impaired hearing. Among 100 kettlesmiths only 9 per cent had normal hearing. Thirty-six of 40 coppersmiths were found to suffer abnormalities of hearing.<sup>28</sup> Not only hearing is affected by noise. Psychologists and nerve specialists testify that the nervous system is very definitely injured.

<sup>26</sup> G. M. Kober and W. C. Hanson, Editors, *Diseases of Occupation and Vocational Hygiene* (Blakiston, 1916), p. 260.

<sup>27</sup> S. Wyatt and J. A. Fraser, *The Effects of Monotony in Work* (Industrial Fatigue Research Board, Report No. 56, 1929). For an excellent objective study of the effects of fatigue and monotony upon the industrial worker, see Elton Mayo, *The Human Problems of an Industrial Civilization* (Macmillan, 1933).

<sup>28</sup> *Monthly Labor Review*, 20:1133-1135 (May, 1925).

## ECONOMIC ASPECTS

The desire for the shorter workday clearly has its economic aspects. Not all the laborers view the matter in the same light, and their judgment is apt to vary at different times according to their immediate purpose and according to who constitute their audience. It has repeatedly been contended by the workers that the working day should be shortened as a means of relieving unemployment. For example, William Green in making his proposal for the thirty-hour week gave it as his main argument that unemployment could not be relieved without a greater reduction of hours than that effected by the NRA codes.<sup>29</sup> It is improbable that he would have chosen the year 1934 to ask for a shorter working week with the same weekly wage had he not thought that he could exploit the unemployment aspect of his case. This is a typical inference from the lump-of-labor idea, that there is a certain demand for a particular product and just so much work to be done in getting the desired amount of the product ready for the market. If the working week is shortened from forty hours to thirty, there remain ten hours' work per week to be done, and this extra work will have to be done by workers now unemployed.

Any such crude statement of the lump-of-labor theory is assailable on the ground that there is no fixed demand for a product, no fixed amount of work to be done during the year. Fundamentally the demand for an article depends upon its price. The laborer always assumes, of course, that he will receive the same wages for the shorter week as for the longer week, if not more. Now if there is no increased productivity as a result of the shortened work week—and obviously there can be none if the laborer's aim is to be realized—the cost of producing the article must increase. The increased labor costs will force the employer to lower other costs if he can, but will undoubtedly eventuate in an increase in the price of the product. This will reduce sales and hence the amount of work to be done. With respect to unemployment the laborer will have improved his position very little if at all.

Although the above reasoning is fundamentally sound, the laborer's contentions are not entirely groundless. His own individual interest does not always lie in the direction of the long-time view. Take, for example, the building industry. On January first of any year there is a certain amount of building to be done. Contracts have been let and must be fulfilled. If the laborer succeeds in shortening the workday, there will be more days of work available during that particular year and for that length of time

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<sup>29</sup> *New York Times*, October 28, 1934.

he will benefit accordingly. Then again the demand for certain goods is fairly inelastic; just so much of them is desired regardless, relatively, of the price. In industries producing these goods the worker will gain in the matter of employment by shortening the workday.

At times, labor has taken what many regard as a quite enlightened attitude toward the economic aspects of shorter hours. Fundamentally, wages depend upon efficiency and of course the laborer is vitally interested in increased wages. He asks for the shorter workday and his request always includes a petition for a higher hourly wage. Obviously, if he can convince his employer that the shorter workday will mean increased efficiency, he will be more apt to obtain his demands.♥ He will strengthen his case with the public, who know that they stand to benefit by more efficient production. If the laborer takes this position, which is really in fundamental contradiction to that previously set forth, he has good grounds for his case.

It has been found by experiment that up to a certain point shorter hours do mean increased productivity. The New York Bureau of Labor Statistics stated in 1900 that the cotton industry of Massachusetts had grown steadily throughout the period of short-hour legislation, its gains being larger than those shown by adjacent states with less radical short-hour laws. According to the company's own report, the change from twelve to eight hours in the open-hearth department of the Commonwealth Steel Company resulted in more economical production, and in an actually lower wage bill per day.<sup>30</sup> The British Health of Munitions Workers' Committee found that a reduction of from seven to twenty hours per week brought on the average a substantial increase in production. In studying the effect of reducing hours from twelve to eight in the paper industry, the U. S. Tariff Board discovered that the labor cost per ton of manufacturers was actually lowered from \$4.35 to \$3.73. The U. S. Industrial Commission reported that "there is general agreement . . . that there has been little or no decrease in the amount of work turned out during the day"<sup>31</sup> since the introduction of the eight-hour day in the bituminous coal industry.♥ The Commissioner reached the general conclusion that "a reduction in hours has never lessened the working people's ability to compete in the markets of the world. States with shorter workdays actually manufacture their products at a lower cost than States with longer workdays."<sup>32</sup>

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<sup>30</sup> R. A. Bull, "The Twelve-Hour Shift in the Steel Foundry. Results of its Abandonment in the Commonwealth Steel Company's Open-Hearth Department and the Substitution of the Eight-Hour Shift," *The Iron Age*, October 3, 1912.

<sup>31</sup> *Report of the United States Industrial Commission*, vol 19, p. 768 (1902).

<sup>32</sup> *Ibid.*, p. 788.

An old experiment, but a very famous one, was that made at the Zeiss Optical Work in Jena, Germany. The plant was owned by Ernest Abbé. In 1870 the working day was twelve hours. It had been reduced to nine hours by 1891 and in 1900 it was changed to eight. The effects of the change from nine to eight hours upon the efficiency are shown in the table following:<sup>33</sup>

INCREASE IN EFFICIENCY UNDER THE EIGHT-HOUR DAY OF 233 PIECE-  
WORKERS AT THE ZEISS OPTICAL WORKS—CLASSIFIED BY AGES

Ages	No. of Workmen	Average Ages	Average Length Service (Years)	Average Piece-Rate Earnings per Hour in Pf.		
				9-hr. Day	8-Hr. Day	Ratio of Increase
22-25	34	23.5	5.5	55.3	65.2	100:117.9
25-30	69	27.3	7.9	62.2	72.6	100:116.7
30-35	69	32.2	10.1	65.1	74.8	100:114.9
35-40	40	37.7	12.7	60.6	70.2	100:115.8
Over 40	21	45.3	15.3	63.3	74.3	100:117.4
	233	31.6	9.6	61.9	71.9	100:116.2

In 1922 a committee of the Federated American Engineering Societies presented a report of a two-year investigation of the twelve-hour day in the steel industry. The committee concluded that among the advantages of the eight-hour day is increased efficiency "due in part to better physical and mental condition of the men, and in part (after the industry has been working the shorter hours for several months or years) to a better class of men attracted by better working conditions. This increased efficiency has manifested itself in increased production per hour and per machine per day, thus decreasing overhead expense. It has also appeared in better conduct of the operations, greater uniformity and regularity of operation and of quality of product, less fuel used, less waste, less need of repairs to equipment, better life of apparatus, etc."<sup>34</sup>

<sup>33</sup> Felix Frankfurter and Josephine Goldmark, *The Case for the Shorter Work Day* (National Consumers' League, 1916), vol. 2, p. 698.

<sup>34</sup> The Committee on Work-Periods in Continuous-Industry of the Federated American Engineering Societies, *The Twelve-Hour Shift in Industry* (Dutton, 1922), p. 290.

In its study of the five-day week in manufacturing industries the National Industrial Conference Board obtained some interesting data. Figures on weekly output were obtained from 127 establishments, 94 of which had reduced the total hours per week. Of these, 6 companies reported a substantial loss in output and 24 reported a loss in proportion to the reduction in hours. No change in output was reported by 46 companies, and 18 companies reported an increase. It seems, therefore, that nearly 70 per cent of these companies actually obtained greater output per hour than under the longer working schedule, inasmuch as they suffered no loss in total output.

✓Other evidence might be given to show the possibility of an increase in hourly output as a result of a decrease in the working schedule, but enough has been offered to indicate that this is not merely a rosy fiction of the worker's imagination. The increased production that has followed in the wake of the shortened workday is due largely to the beneficial effects it has had upon the workers. Health is improved and resources of energy are built up. The laborer is quite apt to revise his attitude toward his job, to feel more interest in his work, to be prompter in performing it, to do less of the loitering to which the weary seem irresistibly impelled, and, in general, to manifest an augmented and more intelligent activity.

✓We have not presented the above data to try to prove that a reduction in the length of the working day will always result in increased efficiency, but only to show that there is a real possibility of its doing so. Circumstances vary, and it may be that under some conditions in some industries, a reduction in the work schedule will result in an increased rather than a decreased labor cost. For example, certain shoe factories operating on a 54-hour week basis in 1916 and on a 49½ hour basis in 1917 showed a loss of output.<sup>35</sup> It is obvious that even when there is an increase in output, the process cannot continue indefinitely. The workday is shortened from twelve to eight and increased efficiency results; then it is shortened from eight to six, and later from six to five. Will there be a proportionate increase in production? Will efficiency go on increasing, or will production be lessened? If the latter, will the loss be in proportion to the hours of work cut off? At what point does the gain in efficiency cease to compensate for the reduction in the number of working hours? At what point does it cease altogether? Such questions as these are perpetually engaging the employers, the employees, and the efficiency experts in heated controversy.

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<sup>35</sup> National Industrial Conference Board, *Hours of Work as Related to Output and Health of Workers* (Research Report No. 7).

Some tentative answers to these questions may be found in the previously cited study by the Bureau of Labor Statistics. Mr. Kossoris concludes that there is no such thing as an "optimum hour schedule" for all of industry but that what is satisfactory for one may be economically wasteful to another. On the whole, however, he believes his survey shows that the five-day week and eight-hour day are more efficient than a work schedule with longer hours. This does not mean, he concludes, "that longer hours are not productive. There is little sacrifice of efficiency, for instance, if a sixth day of eight hours or less is added."<sup>36</sup>

Still another of the economic aspects of the shorter workday must be noted. The policy of standardization is fundamental in modern trade unionism because it is the device by means of which the union seeks to eliminate ruinous competition. The wage rate is standardized. All laborers doing a particular kind of work must insist upon a certain minimum wage. But if a man is permitted to work nine, ten or twelve hours a day for that wage, competition still exists. To close up this gap and thus make its bargaining more effective, the trade union establishes a standard day as part of its general policy of standardization.

#### THE OPPORTUNITY FOR LEISURE

Among the early industrial workers in the United States the most frequent cause of complaint was the lack of leisure, and in the modern industrial struggle the demand for leisure has acquired a new significance. Before the advent of the machine, the laborers got some satisfaction from work itself, a satisfaction which, as we have seen, has been practically destroyed by the extreme division of labor prevailing today. Nowadays he must seek an outlet for his creative impulses elsewhere than in his work, and he must have leisure if he is to find and to utilize opportunities suited to his own tastes and his own capacities. Thanks largely to the machine which has taken most of the fun out of his work, cultural and recreational opportunities lie about him on every hand in greater profusion than ever before, but we must remember that denied the time to take advantage of them he is none the wiser nor the happier.

It used to be contended by the employer, and seconded by a sizable portion of the public, that long hours of work were essential to the moral upbuilding of the worker. The early New Englander had developed the habit of working early and late, and had come to regard it as not only an

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<sup>36</sup> Max D. Kossoris, "Studies of the Effects of Long Working Hours," U. S. Bureau of Labor Statistics, *Bulletin No. 791-A*, p. 2 (Oct. 17, 1944).

economic but a moral and even a religious necessity. The man who himself had worked this way naturally saw no reason why he should not ask his employees to do the same.

✓ Today some employers still feel that added leisure for the workers means added hours of idleness in which the laborer may indulge in such vices as drinking, gambling, and loafing. Others agree with the workers that the only way to develop the mind and tastes is by spending time on them and the worker cannot spend time which he does not possess. Another reason for leisure is the need for an educated group of citizens to make political democracy work. To be sure workers may not spend their spare time studying current political problems, but shorter hours have given them the opportunity they never before had.

#### MISCELLANY

The problem of the working day is not solely one of the number of hours it contains. ✓ Other matters which are closely related to the length of the day and which the laborer seeks to control are shifts, night work, rest periods, overtime, and Sunday and holiday work. The degree of importance of these various factors depends to a considerable extent upon the nature of the industry. Much progress has been made along these lines but undoubtedly much remains to be done if the position of the laborer is to be what he desires. It is true, probably, that in an industrial society there will always be some night work and some Sunday and holiday work which must be performed regularly. Probably, too, emergencies will always arise which will require some overtime work. Yet many abuses can undoubtedly be eliminated without in any way interfering with the doing of what we now regard as absolutely necessary work.

The war effort has meant for many the return to long hours. With the need so great and the supply so small, increased hours are inevitable. There is little doubt, however, that the war won, we will gradually return to shorter hours.



# CHAPTER III

## THE TOLL OF MODERN INDUSTRY

### OCCUPATIONAL DISEASES

THE prevalence of accidents in industry has long been a matter of common knowledge, in fact it has almost come to be accepted as a necessary accompaniment of our industrial civilization. It has also been known that specific diseases were directly caused by work in certain occupations. But not until recent times has there been any recognition that to a very large extent industry is responsible for the diseases of the working classes in general. The diseases have been here and the workers have died of them, but they have been accepted as part of the general perils of living. This is no longer true. Medical science has been showing that they must henceforth be regarded as at least partly the perils of working. Within recent years our knowledge of the relationship between industry and disease has increased greatly. In many instances it has become possible to establish a direct connection; in others where there are found to be several contributing causes, it is difficult to determine the exact share of guilt ascribable to industry.

The employer has of necessity been guided by the profit motive. Were he to permit his humane impulses to interfere with the efficient operation of his industry, the wolf would soon be howling at his door. When a machine becomes broken, obsolete, or worn out, it is discarded because it would be unprofitable to keep on using it. When a human worker is injured, sick, or old, he too must be discarded because it would be unprofitable to keep on using him. It has seemed necessary in this highly industrialized, fiercely competitive society for the employer to sacrifice the human being in the interests of profitable production. One investigator discovered that the average age of 40,000 men employed in twelve metal-working establishments was 31½ years. The same was found to be true in a large steel plant and a brass works. Many concerns refuse to hire men beyond a certain age, the limit being usually quite low. Modern industry has no place for the old or for the physically unfit, yet modern industry is responsible for much of the diseasing and maiming and premature aging of its workers.

There is scarcely a trade which is not fraught with danger to the worker's health. The consumer, whether through ignorance or indifference, continues to demand goods which are made at great hazard to the health and life of the workers concerned. One student, in a study now old, estimated that the death rate among the wage earners receiving the highest income was 50 per cent greater than that among the wealthy, while among the poorest classes it was probably not less than  $3\frac{1}{2}$  times as high.<sup>1</sup> In a more recent study the Metropolitan Life Insurance Company uncovered some interesting facts. They found that the mortality rate of occupied males for all ages above 15 was considerably higher than that found in the registered areas of the United States as a whole. Between the years of 35 and 44 the death rate for men insured in the industrial department of this company was over 50 per cent higher than that of the general population. They also found that in this same group the death rate from tuberculosis was 100 per cent higher than in the population as a whole.<sup>2</sup> The contrast is brought out quite clearly when the mortality of industrial males is compared with that of males engaged in other pursuits. The mortality rates for the industrial group are found to run from  $1\frac{1}{2}$  to more than 2 times the rates for policy holders in the ordinary department of the Metropolitan Life Insurance Company. The figures showed that the death rates for every cause of death were higher among those insured in the industrial department than among those insured in the ordinary department. For example, the death rates for tuberculosis, age period for age period, were from  $2\frac{1}{2}$  to nearly 4 times as high among the industrial workers as among those insured in the ordinary department. The pneumonia rates were more than twice as high among the industrial workers as among the professional, mercantile, and agricultural group. The same has been true of other important diseases.<sup>3</sup> It is true, of course, that there are other contributing factors, but industry is to no small degree responsible for these high rates, as studies of particular industries have clearly shown.

The extent of the danger was revealed in 1922 when L. I. Dublin of the Metropolitan Life Insurance Company and Philip Leiboff listed 700 dangerous occupations. In a more recent survey of 30 establishments engaged in the production of radioactive substances, in which 253 workers were directly subjected to potentially harmful exposure, a total of 23

<sup>1</sup> Robert Hunter, *Poverty* (Macmillan, 1904), p. 144.

<sup>2</sup> U. S. Bureau of Labor Statistics, *Bulletin No. 507*, p. 7 (1930).

<sup>3</sup> *Ibid.*, p. 9.

fatalities and 19 living cases were discovered which were apparently attributable to the type of work done.<sup>4</sup> Diseases resulting from this kind of exposure were of such a nature that usually the victim did not know he was being attacked. In many cases it was not known by anyone until death occurred. In 1915 the Ohio Board of Health reported 154 cases of lead poisoning in 127 indoor painting establishments employing a total of 2382 men.<sup>5</sup> One investigator found that in 10 sanitary-ware factories 36 per cent of the enamelers and mill hands were suffering from lead poisoning.<sup>6</sup> In 1919 another investigator who made a study of the death rate in the cotton-mill town of Fall River, Massachusetts, found that in the age group 15-44 the death rate of operatives was 46 per cent higher than that of non-operatives in the same group, tuberculosis being the chief cause of death.<sup>7</sup>

The United States Public Health Service in comparing disability rates among cement workers with those among rubber workers found that the former had 2.8 times as many colds and attacks of bronchitis, influenza, and grippe as the rubber workers had. Skin diseases caused five times as much disability while diseases of the digestive system caused twice as many absences among the cement workers as among the rubber workers.<sup>8</sup> It is clear that this occupation contributes greatly to the prevalence of certain diseases.

A study of the Metropolitan Life Insurance Company has given rather conclusive evidence that occupational diseases have existed on a large scale. The investigators found that among certain occupations the death rates from respiratory diseases were so much higher than the average as to leave little room for doubt that the high rate was a direct result of the occupation. For example, 15.9 per cent of all deaths among ironworkers were due to pneumonia, whereas only 7.7 per cent of the deaths among all occupied males were caused by this disease.<sup>9</sup>

A statistical analysis of the results of the physical examinations of approximately 10,000 male workers made by the United States Public

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<sup>4</sup> *Monthly Labor Review*, 28:1201 (June, 1929).

<sup>5</sup> George M. Kober and William C. Hanson, Editors, *Diseases of Occupation and Vocational Hygiene* (Blakiston, 1916), pp. 19-21.

<sup>6</sup> Alice Hamilton, "Lead Poisoning in Potteries, Tile Workers and Porcelain Enamelled Sanitary Ware Factories," U. S. Bureau of Labor Statistics, *Bulletin No. 104*, p. 9 (1912).

<sup>7</sup> A. R. Perry, "Preventable Death in Cotton Manufacturing Industry," U. S. Bureau of Labor Statistics, *Bulletin No. 251*, p. 81 (1919).

<sup>8</sup> U. S. Bureau of Labor Statistics, *Bulletin No. 491*, pp. 304-306 (1929).

<sup>9</sup> *Ibid.*, p. 327.

Health Service yielded interesting results.<sup>10</sup> Particularly high rates from respiratory diseases were found in the garment, foundry, and cigar industries. Second in importance among the causes of industrial morbidity were diseases of the digestive system, and particularly high rates for these diseases were found in the garment, glass, pottery, post-office, and cigar industries. The foundry, post-office, glass, and gas industries showed excessive rates for inflamed eyes. Diseases of the ear were found to be prevalent in the glass, foundry, and cement industries.

¶ The list might be prolonged indefinitely. But these few data are sufficient to show that industrial hazards exist and that they are widespread and often of the gravest character. Some of the conditions which now doom many industrial workers to certain disease or death can be eliminated; others seem to be inherent in the nature of the industry and as such must continue to exist as long as the industry does. But the worker is awakening to an active realization of the risks to his health which he is expected to take, and he counts those risks as part of his case against the employer and the industrial system.

#### INDUSTRIAL ACCIDENTS

More capable of statistical measurement than diseases and more swift and spectacular in their results are industrial accidents. According to the 1929 report of U. S. Commissioner of Labor Statistics deaths from accidents were not less than 23,000 per year. Nonfatal injuries range for 2,500,000 to 3,000,000.<sup>11</sup> Mr. H. W. Heinrich of the Travelers' Insurance Company made an interesting estimate of the cost of industrial accidents. From data furnished by the Bureau of Labor Statistics he estimated that \$240,000,000 per year was paid as compensation to injured workmen. Hospital and medical aid cost \$72,000,000, making a total expense of \$310,000,000 incurred because of 2,107,000 injuries to 19,683,500 workers. The direct cost under compensation of a single injury was estimated to be \$146. Legal and administrative costs raised this figure to \$246. Assuming that injuries not subject to compensation laws might be estimated in the same way, Mr. Heinrich arrived at the following cost table:<sup>12</sup>

<sup>10</sup> *Ibid.*, pp. 360-362.

<sup>11</sup> *Ibid.*, No. 157, pp. 5-6 (1915).

<sup>12</sup> H. W. Heinrich, "Cost of Industrial Accidents to the State, the Employer, and the Man," *Monthly Labor Review*, 31:1118 (Nov., 1930). See also H. W. Heinrich, *Industrial Accident Prevention* (McGraw-Hill, 1931).

ESTIMATED ANNUAL DIRECT, HIDDEN, AND TOTAL COST OF  
INDUSTRIAL ACCIDENTS IN THE UNITED STATES

Nature of Accidents	Direct Cost	Hidden Cost	Total
3,000,000 compensable injuries, at \$246 each, including 25,000 fatalities .....	\$738,000,000	\$2,952,000,000	\$3,690,000,000
87,000,000 minor injuries, at \$2 each .....	174,000,000	696,000,000	870,000,000
900,000,000 no-injury accidents, at \$0.50 each.		450,000,000	450,000,000
Total annual cost .....			<u>\$5,010,000,000</u>

Two industries which figured largely in these staggering totals are among the major industries of the country, railroads and coal. Statistical evidence of the danger of railroad work is abundant, owing to the careful and reliable reports of the Interstate Commerce Commission. An examination of the figures for the period 1888-1927<sup>13</sup> inclusive revealed that the peak of fatality for employees was reached in 1907 when 4534 were killed, and the peak of injury, 176,923, in 1916. The best showing as far as fatalities were concerned was made in 1921 when only 1446 were killed; and for injuries, in 1889 when the total was only 20,028. More detailed figures bring the situation into sharp relief. The figures have been recalculated on the basis of 1,000,000 hours, exposure rather than of 1000 men employed. This gives a fairer picture of the actual situation. The frequency rate of fatalities for all trainmen for the year 1916 was 1.38. It reached 1.46 in 1917, but fell to 0.66 in 1927. The frequency rate of injuries for all trainmen was 48.94 in 1916. Then followed a slow but steady decline until 1927 when it was 25.30. From 1930 to 1935 the frequency rate dropped from 16.06 to 11.78. The frequency rate of deaths to employees increased from 0.28 in 1930 to 0.30 in 1938, then steadily dropped to 0.23 in 1939.<sup>14</sup>

Turning to the coal industry we find conditions but slightly better, although there has been considerable improvement in recent years. There

<sup>13</sup> U. S. Bureau of Labor Statistics, *Bulletin No. 491*, p. 268 (1929). The data are for Class I roads only.

<sup>14</sup> U. S. Bureau of Labor Statistics, *Handbook of Labor Statistics, Bulletin No. 694*, vol. I, p. 427 (1941).

were 3242 men killed in 1907 and 1461 in 1931. More enlightening, however, are the various rates. The fatality rate per 1,000,000 hours' exposure was 2.08 in 1907 and 1.82 in 1931. The fatalities per 1,000,000 tons mined were 6.78 in 1907 and 3.31 in 1931. There were mined in 1907, 147,407 tons for every death and in 1931, 301,948.<sup>15</sup>

There has been a steady decrease in the frequency rate from 105.6 in 1930 to 85.1 in 1939, largely due to the comparative decrease of nonfatal injuries; the fatality rate decreased only 0.01 during this period.<sup>16</sup> During the next four years the amount of bituminous coal and lignite produced per man per day rose above all previous records. This increase came at the expense of a great many accidents, many of them fatal. There are no frequency rates available for this period, but the total number of accidents per year is presented below, taken from the officers' reports at the United Mine Workers Convention of 1944.<sup>17</sup>

	Total Accidents	Fatal	Nonfatal
1940 .....	61,089	1,308	59,781
1941 .....	64,731	1,266	63,465
1942 .....	73,482	1,482	72,000
1943 .....	78,064	1,394	76,670

✓ Metal mining is not far behind. It is a smaller industry, employing only about one-fifth as many as coal mining. The quarry industry also shows a high death rate. The frequency rates for mining other than coal increased from 56.8 in 1930 to 69.8 in 1939. As in the case of coal mining, this change was in the nonfatal injuries, the fatalities remaining practically the same.<sup>18</sup>

In 1941 Congress passed a law authorizing "the Federal Government, through the Bureau of Mines of the Interior Department, to investigate safety and health conditions in coal mines, the products of which regularly enter commerce; and to make necessary recommendations."<sup>19</sup> The law aims at securing information concerning the safety conditions and causes of accidents and diseases, which will make possible more effective safety and preventive measures.

<sup>15</sup> *Monthly Labor Review*, 37:1396 (Dec., 1933).

<sup>16</sup> U. S. Bureau of Labor Statistics, *Handbook of Labor Statistics, Bulletin No. 694*, vol. I, p. 430 (1941).

<sup>17</sup> *Monthly Labor Review*, 59:1196 (Dec., 1944).

<sup>18</sup> U. S. Bureau of Labor Statistics, *Handbook of Labor Statistics, Bulletin No. 694*, vol. I, p. 431 (1941).

<sup>19</sup> *Ibid.*, p. 432.

Another cannibal is the steel industry, although it can boast greater improvement than any other of the more dangerous occupations. The Bureau of Labor Statistics has classified the steel plants into two groups, those which produce approximately 50 per cent of the output and which were among the first to introduce safety devices and have persisted in their safety campaigns, and those which have not emphasized safety work so much. In the first group the accident rate for 1913 was 60.3 per 1,000,000 hours' exposure but had fallen to 6.8 in 1926. For the two groups combined the accident rate for the period 1907 to 1911 was 69.2 and for the period 1922 to 1926 was 29.9.<sup>20</sup>

In 1939 a study of these same two groups shows that the establishments carrying on safety programs have reduced their frequency rate to 4.4, whereas the frequency rate of the iron and steel industry as a whole was 9.7.<sup>21</sup> The frequency rate for the iron and steel industry for 1943 had increased 10.0.<sup>22</sup>

As new hazards grew out of expanding war activities, industrial accidents showed a sharp upward trend after 1941. The preliminary estimates of the Bureau of Labor Statistics indicate that 2,400,000 persons were disabled because of work injuries during 1943. The time lost by these workers is estimated at 56,800,000 man-days. The injury total for 1943 was 6 per cent greater than that for 1942 with the volume of disabling injury in the manufacturing industries rising from 635,200 in 1942 to 802,500 in 1943, an increase of 26 per cent. This sharp increase in accidents in the manufacturing industry may be explained partly by the combination of new and untrained personnel with longer working hours and constant pressure for maximum production.<sup>23</sup>

Statistics tell but half the story, if that. The statement that in a given industry 5.2 men out of every thousand are killed per annum elicits scarcely the flicker of an eyelash. The reader may even view the situation as a problem in statistics. Either he lacks the imagination to visualize what that 5.2 really means or he will not make the effort. One writer presents the situation somewhat vividly when he calls attention to the fact that "the industrial casualties of a single year in this country alone equal the average annual casualties of the American Civil War, plus all those

<sup>20</sup> U. S. Bureau of Labor Statistics, *Bulletin No. 491*, pp. 259-260 (1929).

<sup>21</sup> U. S. Bureau of Labor Statistics, *Handbook of Labor Statistics, Bulletin No. 694*, vol. I, p. 412 (1941).

<sup>22</sup> U. S. Bureau of Labor Statistics, *Work Injuries in the United States in 1943, Bulletin No. 802*, p. 6.

<sup>23</sup> Max D. Kossoris and F. S. McElroy, "Industrial Injuries in 1943," *Monthly Labor Review*, 58.242-243 (Feb., 1944).

of the Philippine War, increased by all those of the Russo-Japanese War. As many men are killed each fortnight in the ordinary course of work as went down with the 'Titanic.' This single spectacular catastrophe appalled the civilized world and compelled government action in two hemispheres; while the ceaseless, day-by-day destruction of the industrial juggernaut excites so little attention that few States take the trouble to record the deaths and injuries."<sup>24</sup>

✓ Still we are thinking in terms of numbers rather than of suffering and dying men and of the grief and the fears for the future which must assail their wives and children. So narrow are the sympathies of most of us that we are but little moved by catastrophes unless they strike our own family or friends. Only then do they take on reality.

✓ However, follow the coal miner from his home to his work. He calls the place home although it may be little more than a hovel. Within are his children, one or two, four or five, perhaps more, all undernourished and under-clothed. Perhaps an older child makes the journey to the mine with him. A drawn and haggard woman remains behind to prepare the scanty meals, to do the washing and the ironing for her own and perhaps for some more fortunate family besides, to take care of the baby and scrub up the house. As she bids him goodbye the ever-recurring thought flashes across her mind that this strong man who is leaving her may return a cripple or a corpse. She has seen many a husband and father come home from work on a stretcher and the picture of *her*-husband returning in that condition is never absent from the background of her thoughts. Nor is the question (to which she has never been able to think up a satisfactory answer): what would we do?

This is the home the miner leaves behind him. He loves his wife and his children and he knows that their very lives hang upon the money he earns. He reaches the head of the shaft and awaits his turn to board the cage. It comes and he steps inside. The gate clangs behind him. He takes hold of an iron bar, and the descent begins. Above him he leaves his home and his family, the light of day and the open air, all that is dear to him. With great speed he drops into a seemingly bottomless pit. But finally the cage comes to a sudden stop and he begins the long journey on foot to his own particular chamber where he will labor all day to bring forth the black diamonds that keep his more favored fellow-beings snug and warm. Death lurks on every hand. At any moment it may choose

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<sup>24</sup> E. H. Downey, *History of Work Accident Indemnity in Iowa* (Iowa Historical Society, 1912), p. 2.



him as its next victim. In his mind too there is the ever-present question, what would they do?

### RESPONSIBILITY

<sup>8</sup>What is responsible for this terrible human wastage? Is it inseparable from mechanized industry? Is the driving force of profit responsible? Is the laborer paying in blood for the greed of his employer? Is he himself to blame because of ignorance and carelessness? And how far is he responsible even for these?

First must be noted the mechanical nature of industry.<sup>9</sup> It is probably inevitable that some accident and disease should go along with the modern system of production. If the machine's power to produce is great, so also is its power to destroy, and the perfectly safe machine has not yet been constructed and probably never will be. The simple hand tools of earlier days were subject to a high degree of control by the workmen and even then accidents occurred. Seldom in these days does a man control the operations of even a single machine. His work is only one relatively small part of a complicated process, which is probably incomprehensible to him, or at any rate uncomprehended by him. Far from controlling the machine, he is controlled by it.<sup>10</sup> One little slip, for which he may or may not be responsible, and life and limb are in jeopardy.

<sup>11</sup>The modern system of production is of necessity highly cooperative. The successful completion of one operation is contingent upon the successful completion of hundreds of other operations. In such a complex process mistakes are bound to occur now and then, and the least of mistakes may bring the direst consequences in its train. A misinterpreted order causing a man to do the wrong thing may bring injury or death not only to him but to his fellow workers as well. A beam which has been overloaded gives way, and a whole building collapses burying numerous workmen who are wholly unaccountable for the accident. Gas escaping in a mine, a lighted lamp, and many miners are blown to eternity. A fall of roof, and hundreds are killed or disabled. A single rail gives way and a whole train crew go to their death.<sup>12</sup> Unquestionably the system itself is responsible for hundreds of accidents which, once it is assented to, must be regarded as inevitable.

<sup>13</sup>Accidents as well as some impairment of the worker's health must, then, be accepted as inevitable if production is to go on at the present rate. Apparently no amount of health precautions on the part of the miner himself or the employer can prevent him from breathing dust and thereby rendering himself more susceptible to respiratory diseases. The din of the boiler

factory must have its harmful effects upon the ears and nervous systems of the boiler makers. The fumes, the smoke, the noise of the steel mill can not be eliminated entirely. If we are to have our steel, some laborers must pay a price in the form of diseased bodies and premature old age. Unless we are to return to a less economical system of production (and could we if we would?), unless we are to relinquish the tremendous advantages of mass methods, thousands of men are, and must continue to be, doomed to a life of monotonous labor that cannot but warp their physical and intellectual life. Certainly no one can gainsay that our tremendous wealth is purchased with a price that is paid in the coin of human suffering. Apparently it is beyond the power of man to determine whether that price shall be paid or not. Apparently there must be production; and if there is to be production, there must be human wastage.

The worker himself is not wholly guiltless, and the employer must also assume part of the blame. But human nature is ill-adapted to the machine technique. It is quite clear that no definite line can be drawn between the responsibilities of the system itself and those of the human beings mainly concerned with its operation. Although a great many accidents are undoubtedly due to the negligence of the injured workman, many so ascribed should surely be charged to the account of the machine instead. To operate machinery without a mistake a man must be an automaton. And nature has not produced and probably never will produce automata. As a human being, man must be allowed the right to make some mistakes without being held responsible for the consequences.

¶ Much of the worker's poor health is commonly attributed to his own indifference to hygiene. He fails to take proper exercise. He does not spend sufficient time in the open air. He pays little if any attention to his diet. He lives amid dirt and sometimes filth. He fails to keep even himself clean. When the early warnings of disease appear, he pays no heed. He does not consult a doctor and he goes on with his work until the disease drags him down and the medical care which, earlier, might have saved him is now of no avail. Again the weakness of human nature is ignored. Again man is expected to operate as a perfect organism. Does the workman know the importance of fresh air, and if he had time to spend in it, where would he find it? Does he know the importance of good food? And if he did know, could he afford to buy it? Does he know the importance of immediate medical attention and rest at the first danger signs of illness? And if he did know, with what would he pay the doctor? Who would pay the bills while he was taking the necessary rest? Who or what is responsible for his ignorance of these important matters and for his lack

of means to utilize such knowledge as he possesses? If he himself is accountable, so also is the very nature of man which shackles all, in greater or less degree, with the characteristic human frailties; and so, also, is the economic and social system which cumbers his path with obstacles and hazards of such number and magnitude.

¶ But when we have explained away many of the accidents and much of the illness suffered by the workmen, there will still remain some, how large a proportion no one knows, which can only be ascribed to his own negligence. He is warned not to smoke in the mine. He smokes, gas is ignited, there is an explosion, and he dies in direct consequence of his own inexcusable carelessness. He is warned against drinking, is threatened with discharge. Nevertheless he takes a drink before going to work, turns the wrong lever, and is brought home on a stretcher. Too often men are deceived by a false sense of security. They feel they lead a charmed life, immune from accident and disease. They hear of other men being injured or killed but it seems as if such catastrophies could never befall them. They grow careless and sooner or later meet with the inevitable accident. "Just this once" has signed many a man's death warrant. Cautioned time and again never to do such and such a thing, the workman says, "Just this once," and the accident occurs. Unquestionably the laborer is sometimes careless and negligent and thereby incurs responsibility for accidents to himself and his fellow workmen.

¶ The employer cannot be entirely exonerated either, though again the exact extent of the responsibility is impossible to measure. He is operating in a system which sets up profits as the acid test of success. He is, as he himself will readily acknowledge, not in business for his health. He must make profits. To install safety and health devices increases the cost of production. On the other hand, a man is expected by society as a whole to make profits in business by wise management and efficient production. It is not expected that he will gain a competitive advantage by exploiting his laborers. After making due allowances for the exigencies of the competitive system, undoubtedly the employer is guilty of causing some of the accidents that occur. Management has not yet reached the point where it is 100 per cent efficient. Ought we to demand that it should reach that point? Just as it is unreasonable to expect the workman to be an automaton, so is it unreasonable to expect perfection of the manager. Nevertheless the employer is sometimes careless and negligent, too, and where power is great, responsibility is also great. A deeper and more intelligent concern on the part of the manager for the welfare of his workmen would unquestionably lessen the number of accidents.

There is another party who cannot escape bearing some of the blame. That party is the consumer. All goods are produced because some consumer wants them and will pay for them, and they are produced in the amount that the consumer desires. The consumer is ultimately responsible for production and for the form which production takes. When he asks for luminous watches, luminous watches are produced in the quantity demanded, even though a proportionate number of workers must risk the loss of their teeth and the contracting of a fatal disease. The consumer asks for rubber footwear, and workers are brought into contact with several dangerous poisons. The consumer wants a felt hat, and to gratify his desire, numerous men and women are made more susceptible to tuberculosis. He demands leather shoes, and the workmen engaged in the tanning of the leather are called upon to face, it is said, forty-two different hazards, among them a loathsome and fatal disease called anthrax. The list might be prolonged almost indefinitely. In so far as he is guided solely by the price of the goods he buys, and through ignorance or indifference fails to find out the conditions under which it is produced, the consumer is forcing the humane enterpriser to a choice between going out of business and omitting to provide the safeguards to life and limb which he would like to provide. It seems justifiable to hold the consumer liable in some measure for a goodly share of those industrial accidents and diseases which appear at first glance to be inherent in the industries themselves.

#### POSSIBILITIES OF PREVENTION

To the thinking laborer and those who have his interest at heart, the greatest source of irritation is probably the fact that in our present state of knowledge a great many industrial hazards could be eliminated. John B. Andrews, former secretary of the American Association for Labor Legislation, writes, "I believe it is a reasonable statement that two-thirds of the fatal and serious accidents at the bituminous coal mines of this country could be prevented by the universal adoption of safety methods already in successful operation at some of the mines of this country or in Great Britain."<sup>25</sup> Director Bain of the U. S. Bureau of Mines has publicly stated, "The great explosions should not be considered to be normal occupational accidents. Investigations carried on by the Bureau of Mines for more than ten years have demonstrated beyond question of doubt that such spreading of explosions by coal dust can be prevented. Responsibility for this rests upon mine managements."<sup>26</sup> The committee

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<sup>25</sup> John B. Andrews, *Needless Coal-Mine Accidents* (pamphlet, 1924).

<sup>26</sup> *Ibid.*

on mine safety of the Bureau of Mines wrote, "The outstanding accomplishment [of the research work of the Bureau] is the practical demonstration of the cause and nature of coal-dust explosions and the development of methods for their limitation and control by use of rock and shale dust."<sup>27</sup> It has been clearly demonstrated that gas and coal-dust explosions can be eliminated by the intelligent use of rock and shale dust. Yet until recently practically nothing had been done to prevent this type of accident. The Bureau of Mines has patiently carried on its work of education and some progress in the direction of voluntary action has been made.

What is possible in the way of making industry safer has been demonstrated on the railroads. The number of trainmen killed per thousand employed declined from 4.23 in 1917 to 1.79 in 1921, and to less than one in 1924. These reductions were largely due to the installation of various safety devices and the inauguration of safety measures.

The best example of accident prevention is furnished by the iron-and-steel industry's experience. In 1910 steel workers were being killed and injured at the rate of 74.7 for every million man-hours of exposure, and 7.2 days were being lost for every thousand hours of exposure. A definite safety policy was inaugurated and particularly in some of the plants was vigorously enforced over a period of years. By 1932 the frequency rate had declined to 18, a drop of nearly 76 per cent. During the same period the severity rate declined about 56 per cent. Other industries have followed the lead of the steel industry with somewhat similar results.

The paint industry is fraught with the gravest dangers to life and health. Yet one student who has made a most careful study of this industry states that "no paint need be dangerous if it is used with sufficient caution."<sup>28</sup> The possibilities of prevention are strikingly demonstrated by the experience of the Pullman Car Company. Lead sulphite is much less likely to be absorbed into the system than lead carbonite, which has been used most commonly. When the sulphite was substituted for the carbonite, the rate of lead poisoning was reduced to one one-hundredth of its former magnitude.<sup>29</sup> Another example is supplied by the British potteries, in which by the use of leadless glaze and glaze low in lead content, and of various precautions having to do with cleanliness, clothing, and physical examinations, the number of cases of lead poisoning was greatly reduced.<sup>30</sup>

<sup>27</sup> *Ibid.*

<sup>28</sup> Alice Hamilton, *Hygiene of the Painter's Trade* (U. S. Bureau of Labor Statistics, 1913), p. 32.

<sup>29</sup> *Ibid.*, pp. 21-22.

<sup>30</sup> *Ibid.*, pp. 181-183.

Data gathered by the Metropolitan Life Insurance Company draw an encouraging picture. Although the situation with regard to occupational diseases and industrial accidents remains little less than appalling, it is quite gratifying to note that among the industrial policyholders of the Metropolitan Life, at least, the death rate has rapidly declined and the life expectation increased considerably during recent years. From 1911 to 1923 the death rate fell from 1250 per 100,000 to 890 per 100,000, every age group sharing in the decline. The life expectancy increased five years for each industrial worker at the age of twenty. Particularly encouraging is the fact that, although the death rate has declined for all classes, the group of workers included in the Metropolitan Life data have exhibited a greater improvement than has the general population.

The indications of these data, which of course cover only a limited number of persons, are that the decline in mortality for all of the important causes of death has been more rapid among industrial males than among the general population. By way of interpretation Mr. Dublin and Mr. Vane conclude their analysis with the following: "What factors have brought about this vast improvement in the health and longevity of industrial workers? Surely among the many causes must be included the wide expansion of workmen's compensation, preventive industrial medicine, the safety movement, the reduction in the hours of labor, elimination of the sweatshop, better plant sanitation, the wider education of the workers regarding the dangers inherent in certain occupations, and the more intelligent care now taken to safeguard the health of the workers. But even more important has been the improved standard of living which the increased prosperity of the American wage earner has provided."<sup>31</sup>

The Metropolitan Life Insurance Company continued to give encouraging reports in 1943. The health conditions among the millions of workers and their families insured by this company in the year 1942 were excellent. The mortality rate was 7.39 per 1000, as compared with 7.44 for the preceding year. The low mortality rate resulted from low death rates for persons in early childhood and those over 55. Higher mortality rates were found in the age groups 15 to 19 and 20 to 24. In the 20 to 24 age group the mortality rate for white males exceeded the previous year's rate by almost 34 per cent, this being the group in which most of the deaths of the battle casualties occurred.<sup>32</sup>

Besides the advance which has been made, however, gratifying though this is, that which might be accomplished rises up like a mountain. The

<sup>31</sup> U. S. Bureau of Labor Statistics, *Bulletin No. 507*, p. 13 (1930).

<sup>32</sup> *Monthly Labor Review*, 56:534 (April, 1943).

challenge is to public indifference. The lives and health which have so far been salvaged pile up chiefly to the credit of social control over the economic system. Most of the serious attempts which have been made by industrial management to reduce the hazards of work have followed the enactment of laws extending the liability of employers for accidents incurred in their plants. The widespread adoption of workmen's compensation laws, beginning in 1911, has acted powerfully in the direction of greater safety. The consumer (who is everybody) is, after all, responsible for the production of goods and hence for the conditions under which they are produced. Is it not his duty, therefore, to use the most effective means at his command for putting his convictions into force, namely the social and political organizations of which he is a member?

### OLD AGE

Industry cannot be held wholly responsible for old age. Regardless of the nature of industry, men are bound to grow old if they live long enough. The problem of old age is much more, then, than a matter merely of industrial maladjustment. But there is no doubt that industry contributes to the seriousness of the problem. Men will grow old, to be sure, regardless of what industry may do. However, if they grow old prematurely because of accidents or illness arising from the conditions under which they have had to work, or because of the strain of modern industrial life, if industry arbitrarily brands them as old when they are still strong and capable, if when they are "too old to work" they have nothing to live on because their wages were barely sufficient to keep them alive while they were working and earning, then surely industry is in some measure responsible for their plight.

That the old no longer have the place in industry that they formerly occupied is clearly shown by the various census figures. According to the 1890 census 73.8 per cent of males sixty-five and over were gainfully employed. By 1900 the number had fallen to 68.4 per cent and by 1910 to 63 per cent. The 1930 census showed 58.3 per cent of males sixty-five and over gainfully employed. Thus the period from 1890 to 1930 showed a decrease of 14.8 per cent in this group gainfully employed. That advancing years make it much more difficult for industrial workers to find employment than for other groups in society was clearly brought out in the Middletown study. It was found that 12 per cent of the males fifteen years of age and over were between twenty and twenty-four, whereas the proportion of male workers in this group working in one of the largest

machine shops in the city was over 19 per cent, in another 27 per cent. Twenty-seven per cent of the city's male population was found to be between the ages of forty-five and sixty-four, and over 17 and 12 per cent of the workers in the plants studied were in this age group. Only 1 to 2 per cent in the age group sixty-five and over were found in these plants, whereas this same age group constituted 7 per cent of the male population of the city.

The 1937 unemployment census shows that the problem of employment of men over forty-five was more serious than at any previous time. Over 18 per cent of nonfarm workers between the ages of forty-five and forty-nine were totally unemployed or employed on emergency work, whereas 23.7 per cent of those between 60 and 64 were out of work.<sup>33</sup> During the period of the Second World War many old people returned to industry and others, who might normally have been retired, remained at work. It is difficult to imagine, however, that these workers will remain employed when the manpower shortage has ceased to be acute.

Statistics are helpful in giving a picture of the general situation, but they do not by any means tell the whole story. It is easy to lose sight of the individual in the great mass of figures. Yet the individual is there. He it is who, having perhaps worked for the same firm for many years on a wage barely large enough to keep him and his family from starvation suddenly finds himself displaced by somebody younger and stronger and more capable of meeting the pitiless demands of modern industry. He has seen it coming, has known that one of these days the great new giants of power and speed would prove too much for him. But that does not make any easier the humiliating and almost hopeless search for a new job. Everywhere the answer is the same, "You are too old to work." In her study of one thousand homeless men, Mrs. Solenberger found that "no class of our applicants . . . seemed to be more uniformly hopeless and unhappy than the men who had passed sixty, and who realized that the doors of industrial opportunity were being closed against them and that it was only a short time before they must become wholly dependent upon charity."<sup>34</sup>

The men themselves are not apt to accept the verdict with equanimity. They feel that industry should have a place for them. Mrs. Solenberger gives some characteristic statements: "I am as well able to work as I ever was. Better, too, because I am so much more experienced than a young fellow."

<sup>33</sup> U. S. Bureau of Labor Statistics, *Handbook of Labor Statistics, Bulletin No. 694*, vol. I, p. 668 (1942).

<sup>34</sup> A. W. Solenberger, *One Thousand Homeless Men* (Russell Sage Foundation, 1910), p. 112.



"Experience ought to count for something. I know there is a place for me somewhere if I can only find it."

"It cannot be possible that I am never going to have steady work again. I am not old enough to be thrown out yet. I'll get located soon, but I'll have to ask a little temporary aid."<sup>35</sup>

It is idle to berate industry for its seemingly heartless treatment of the aged. Competition is keen in practically every department of industrial activity. Costs must be cut, efficiency must be maintained, sales must be made if the enterpriser is to stay in the fight. His sympathies can enter into his calculations to a certain extent, perhaps, but he dare not allow them to be his sole or even his main guide in determining his business policies. There must be a net profit at the end of the fiscal period. A machine cannot be used until it falls apart. Long before that time comes the owner will discard the old machine and replace it with a new one, and he must calculate with the last degree of nicety just when it will be most profitable for him to make the change. The one who reckons most accurately will have a competitive advantage over his fellow employers and to that extent will be the most apt to survive.

The same process must be applied to labor. The enterpriser cannot afford to change laborers continually because the cost of training the new laborers is too great. But neither can he afford to keep the same laborers until they fall apart. Again he must calculate to find the exact point at which it will be most profitable for him to discard the old and take on the new. Unless he does this he will be at a competitive disadvantage, for as long as industry is organized on a competitive basis, the individual enterpriser must be guided chiefly by cost and income. The data which we have presented indicate that enterprisers are finding that the most profitable point for change is coming at an earlier and earlier age in the life of the worker, until now the door may be closed to men and women in the prime of life. The worker feels the humiliation of being treated like a machine. He fights for a status in society quite different from that of a commodity to be bought and sold and discarded under the most modern accounting systems. As an individual rebelling against an economic order he is waging a fight that is all but hopeless.

There is a real reason why society should be interested in the problem. Viewed from a theoretical angle the enterpriser is getting away with something. In the case of the machine he must keep it in repair and pay the cost of operating it, and then when he discards it he must replace it with

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<sup>35</sup> *Ibid.*, p. 113.

a new one. This new machine he must *pay* for. That he makes use of a depreciation reserve to distribute the cost of the machine over its lifetime in no wise alters this fact. With labor it is different. He pays the laborer a subsistence from day to day, and when the time comes to send him to the scrap heap he goes out on the market and gets his new laborer without any initial cost. Some one else has had to pay the cost of getting that laborer ready for the market.

This it is seen that the enterpriser is getting something for which he has not paid. But some one must pay. To the extent that the laborer is not receiving an income large enough to maintain himself and his family in some degree of comfort and to provide for his old age when his earning power has decreased or has been cut off altogether, not only do he and his family suffer but society also suffers. Our study of the modern industrial system clearly shows that this system tends to deteriorate the physique, the intelligence, and the character of the workers. In so doing it is depleting the capital stock of the country, and the problem of the aged therefore becomes a problem of society.

## CHAPTER IV

### INCOME

#### IMPORTANCE OF INCOME

IN MANY respects the wage issue is the most important phase of the laborer's demands. Certainly it seems to be the most insistent. The wage question has taken first rank as the immediate cause of strikes and there is good reason for this priority, for the laborer's other grievances can, to a considerable extent, be alleviated if his income is large enough. He greatly fears unemployment, because he knows he will have nothing to fall back on if he loses his job and his income is cut off. Were his income larger, he might be able to save enough during his periods of employment to tide him over the intervals of unemployment. As a matter of fact, in the seasonal industries hourly wages are sometimes higher because of the intervals of unemployment. Disease and accident also would cease to be the deadly perils that they are if the worker's income were sufficient to compass the proper rest and care. He would not feel compelled to go to work when ill. He would have access to better medical attention, and would utilize it more frequently. He could anticipate with something like composure the layoff due to sickness or accident.

The gratification of men's desires is ultimately and basically contingent upon their possession of at least a modicum of wealth. The rich rhapsodize to the poor on the blessings of poverty, but few are they who actively seek these blessings by deliberately getting rid of their wealth and joining their destitute brothers. Up to a certain point, at least, increased income means increased comfort and increased happiness. There is little danger that the laborers will get beyond that point.

The significance of the wage question is further demonstrated by the stress which it receives at the hands of the critics of our present economic system. It is largely the "wage system" that these critics attack. And in a certain sense they are attacking the vital element. The term wages as used in this discussion must be understood to have a particular meaning. As generally used, it means the income received for human service; the intention being to classify income according to functions performed, the other forms of income being usually designated as rent, profits, and inter-

est. Using the term in this sense, we find that the president of a railroad becomes a wage earner. However, when the social critic decries the "exploitation of the wage earner" and the "wages system" he is not pleading the case of the railroad president. The term has a narrower meaning which applies to "the price of labor hired and employed by an enterpriser." This use of the word implies the existence of a laboring class, distinct from the professional class and the salaried class, and including the great mass of skilled, semiskilled, and unskilled laborers.

We found the wages system coming into being when the conditions of production had so far changed that the journeyman "retained his hand tools but lost ownership of the shop and raw material. Likewise he lost control of the market and the price-bargain. Thus we have two industrial classes: the journeyman who owned no capital and depended upon his wages for a living; and the retail merchant-employer, who owned the capital, and, since he no longer performed manual labor, looked for his remuneration to his investment and his managerial ability."<sup>1</sup> An economic cleavage did not appear immediately between the employer and the employee; but the wedge had entered, and before long the breach was widening, varying in size with the changing times. This was the beginning of the large wage-earning class which vexes present-day society with so many problems pressing for solution.

There is no agreement, of course, among the members of this class or among its friends as to the best method of procedure in dealing with the wage question. Most workers, including both trade and industrial unionists, are simply trying to get more for themselves, in accordance with the traditional tenets of capitalism. These workers are primarily interested in how much they can buy with their wages, and whether wages are sufficient to pay for the necessities and some of the comforts of life which the American standard of living is expected to provide. The average worker believes that he should receive a larger share of income than he does, since he never seems to have enough for many of the comforts of life, and sometimes not enough for the necessities. This conviction is reinforced by evidences of the great wealth of the "upper class" which are displayed everywhere before him. The bitter sting of poverty lies in the belief that others have more than enough, and further, that the United States could provide an ample standard of living for all if her resources were fully utilized. It is to these grievances of labor to which we now turn.

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<sup>1</sup> John R. Commons, *History of Labour in the United States* (Macmillan, 1921), vol. 1, pp. 56-57.

## MOVEMENT OF REAL WAGES

What has been the course of wages? And here, of course, we have in mind real wages. The significance of income lies solely in what it will buy. An increase in money wages is serviceable to the laborer only to the extent that it enables him to purchase more goods. The monetary experiences of the European countries during the First World War enforced this point far more effectively than any amount of talking and writing could do. There was a time when poverty-stricken Germans on the verge of starvation could reckon their incomes in millions of marks.

Immediately it must be recognized that we are treading on uncertain and dangerous ground. Any conclusions here reached must be regarded as merely tentative. In the first place, the wage statistics now in existence are largely fragmentary, particularly those of the earlier years. Then there is no standard method of handling and interpreting them. To these difficulties must be added the movement in the purchasing power of the dollar. Not all classes, not even all classes of labor, are affected in the same proportion by changes in the price level. The degree to which a particular group is affected depends upon the extent of the change in the prices of the goods which are chiefly bought by that group. Yet despite the difficulties which are invariably encountered in dealing with this question, a number of careful studies by competent and disinterested students have brought some measure of order out of the chaos of facts confronting them.

One of the most comprehensive studies of our national income was published by the National Industrial Conference Board.<sup>2</sup> The figures therein presented are limited, to be sure, by the scarcity of data, particularly for the earlier years, but they do represent accurate approximations.

Mr. Martin's study indicates that from the time of the first census to 1937 real income in the United States has increased from \$214 per person in 1799 to \$602 in 1937. This increase, however, has not been continuous. For example, between 1799 and 1849 the actual betterment in real income was slight. Although 1849 was a prosperity year the income in current dollars was less than 1799, whereas on an adjusted basis the 1849 figure was only 8 to 15 per cent above that for the earlier date.

With the exception of the war years the trend of real income between 1849 and 1899 was definitely upward. This, the period of our amazingly rapid economic growth, saw an increase in per capita real income from about \$250 to about \$475.

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<sup>2</sup> Robert F. Martin, *National Income in the United States* (National Industrial Conference Board, 1939).

The present century has likewise witnessed some increase in per capita real income, although that rise has been small and has not been constant. After a short period of business depression the general upward move of income continued to the time of the First World War. War prosperity created large increases in dollar income, but when these figures are adjusted to living costs, it is apparent that little if any increase in real income occurred during the war years. Prosperity following a brief postwar slump raised the income figure slightly, but the depression following 1929 brought per capita real income down rapidly. This descent was checked in 1937 but the fact remains that real income in 1937 was about the same as it had been in 1913, although a fourth higher than in 1899.

The period of the Second World War brought increases in earnings for the average American worker, but whether those increases resulted in higher real wages will long be debated. The Bureau of Labor Statistics method for measuring changes in living costs and hence changes in real wages was attacked by both the C.I.O. and the A.F. of L. as being unrealistic and sharp words in long bulletins were exchanged on the subject. The argument is largely statistical in nature and the Bureau of Labor Statistics index was approved by a committee of the American Statistical Society. Bearing in mind labor's criticism of the cost of living index, we may, nevertheless, obtain valuable information from a recent study of the "Spendable Earnings of Factory Workers" made by N. Arnold Tolles of the Bureau of Labor Statistics.<sup>3</sup> Dr. Tolles concludes from his studies that "The average net spendable earnings of a worker with three dependents, after bonds and taxes, exceeded the cost of a January, 1941, standard by \$5.65 per week." Workers in some industries, to be sure, fared better than others but, "Prior to the attack on Pearl Harbor no prospect existed for even maintaining the living standards of the mass of workers in the event of a major war." Most factory workers have maintained and bettered their living standards during the war "as a result of more intensive work for longer hours by a larger labor force."

#### STANDARD OF LIVING

Do the wages received at any given time enable the worker to purchase the bare necessities of life together with some share of the comforts that yield him great satisfaction? The worker, of course, is concerned with his absolute wage, he is interested in whether or not that absolute wage is

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<sup>3</sup> N. Arnold Tolles, "Spendable Earnings of Factory Workers, 1914-43," U. S. Bureau of Labor Statistics *Bulletin No. 769* (1944).

increasing. But his greatest anxiety centers upon the question as to whether he can buy with these wages the food, the clothing, and the shelter which he and his family must have to live in some degree of comfort.

It is not proposed at this point to go into the various phases of the standard-of-living theory of wages. Some contend that a laborer should receive a wage large enough to maintain a decent standard of living. Others hold that wages depend upon efficiency and that industry is not morally, or otherwise, bound to pay a man wages just because he needs them. Again it is often contended that the standard of living influences wages. If the standard of living goes up, wages tend to go up also, largely, it is said, because the laborers will fight hard to maintain the new standard. It is also maintained by some that a higher standard of living will raise wages by increasing efficiency. But we must resolutely turn our backs upon these alluring bypaths.

Regardless of the scientific soundness or unsoundness of one or another of the various statements of the standard-of-living theory of wages, it is obvious that the laborer himself is going to be deeply concerned with the relation between what his wages will buy and what he thinks he needs. In his argument for higher wages he will continue to offer evidence in support of his contention that he is not earning enough to maintain what he regards as a decent standard of living. So that scientifically sound or not, the standard-of-living theory is going to continue to play a major part in wage discussions, particularly those in which the laborer himself participates, and is, of course, of great concern to the student of the labor movement.

In considering the relationship between wages and the standard of living there is one point that needs especial emphasis—namely, that standards of living vary among different people. What is a luxury for one is a necessity for another. And not only do they vary from person to person, they differ for any one person from time to time. This fact is particularly significant in the study of the movement of real wages. We may compare the real wages of 1896 with those of the present and find, as a number of students have done, that they are higher now. Yet it may be that, viewed from one angle, the laborers are no better off than in 1896, for their standard of living may have risen at the same time and to the same degree as their wages. What was a luxury in 1896 might be a necessity now. The same laborer who in 1896 had no great desire for a given good—say a bathtub—and who therefore experienced no pain as a result of his inability to buy it, might now be extremely humiliated by his lack, and feel that he was being unjustly deprived of a necessity of life. Discontent will take possession of

him; and discontent arising from inability to gratify cherished desires is a most important factor in the industrial conflict. Fifteen or twenty years ago no laborer dreamed of wanting an automobile. Today when he sees thousands of cars on the road, when everybody else seems to have one, he becomes disgruntled if he cannot own at least a second-hand Ford, and the time is not far distant when he will need more than a second-hand Ford to keep his disposition sweet. Standards of living change; and if, as real wages increase, the standards keep pace with them, from a psychological standpoint the laborer is no better off than he was before.

What is a decent standard of living? How large an income is necessary to finance such a standard? Immediately it is seen that many difficulties will be encountered, some of which have been hinted at already. What is a decent standard for one group is obviously not decent at all for another having more highly cultivated tastes and desires. Luxury for one group spells necessity for another. What is subsistence? What is comfort? And then, these questions satisfactorily answered, there remains the statistical difficulty of determining just how much food, clothing, recreation, education, and medical care any given income is capable of buying.

Much loose talk and much propaganda have been expended on these questions. So the laborers are not receiving enough to maintain a decent standard of living? Well, they seem to have their automobiles and their radios. The factory girls all wear nylon stockings. They also buy fur coats, and eat pickles for lunch instead of meat. Few indeed are the persons who have not something to contribute on the subject of the laborer's standard of living. Not all are unfavorable to the laborers. Some, allowing their emotions to outrun their reason, generalize from a few known instances of distressing conditions and picture the entire working class as undernourished, half-naked, and maimed. Amid the uninformed chatter of those on the one hand who condemn an entire class at a stroke, and of those on the other who take a melancholy pleasure in exaggerating both the workers' sufferings and their virtues, some careful and scientific work has been done by students interested solely in finding the truth of the situation.

An exhaustive study of poverty is not necessary to show that there are many whose incomes are not sufficient to keep them out of the pauper class. But the precise extent of poverty is difficult to determine, because, for one reason, there is no agreement as to just what constitutes poverty. A pioneer investigation in this field was made in 1904 by Robert Hunter. He estimated that the proportion of poverty in our large cities rarely fell below 25 per cent, and that from 14 to 20 per cent of the entire population



belonged in the poverty group. A later investigation was made by Parmelee, who concluded that "at least one-half and probably more of the families of this country are in a state of poverty."<sup>4</sup> A more conservative estimate was made by Charles D. Kellogg of the Charity Organization Society of New York City, who in 1890 calculated that about 4 per cent of the population lived in poverty. Various studies of standards of living have been made by Dr. John A. Ryan,<sup>5</sup> Robert Hunter,<sup>6</sup> F. H. Streightoff,<sup>7</sup> and the Bureau of Labor Statistics,<sup>8</sup> and others, which indicate that wages are often not sufficient to provide even the necessities of life for the wage earner and his family.

A detailed study was made by the National Industrial Conference Board, the results of which appeared in published form in 1928. Four large cities, four medium-sized cities, and four small cities in the industrial sections of the country were personally investigated. The cost-of-living data were based on the local prices of food, housing, fuel and light, clothing and sundries. The Board made the following estimates with regard to the average minimum cost of maintaining a fair American standard of living for the family of an industrial worker, including the worker himself, his wife and two children: in the larger cities, \$1552 in Cleveland to \$1628 in New York; in the medium-sized cities, \$1504 in Dayton to \$1618 in Reading; and in the small cities, \$1142 in Marion to \$1567 in Lockport.<sup>9</sup> In an earlier study, made in 1926, the same Board found that the average weekly earnings of all wage earners in the United States were \$27.16, which with a maximum of working time would amount to a little more than \$1400 in a year.<sup>10</sup>

In 1936 the Works Progress Administration prepared a "quantity budget of goods and services necessary for a basic maintenance standard of living," and an emergency budget which was "a direct concession to conditions produced by the depression, constructed in recognition of the fact that there are circumstances under which families can and do cut costs temporarily without great physical discomfort. Followed over a long period, the practices called for in the emergency budget may prove harmful to both

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<sup>4</sup> M. F. Parmelee, *Poverty and Social Progress* (Macmillan, 1916), p. 103.

<sup>5</sup> John A. Ryan, *A Living Wage* (Macmillan 1903).

<sup>6</sup> Robert Hunter, *Poverty* (Macmillan, 1904)

<sup>7</sup> F. H. Streightoff, *The Standards of Living*, (Houghton Mifflin, 1911).

<sup>8</sup> *Monthly Labor Review*, 9 420 (Aug., 1919).

<sup>9</sup> National Industrial Conference Board, *The Cost of Living in Twelve Industrial Cities* (1928).

<sup>10</sup> National Industrial Conference Board, *Wages in the United States* (1926), p. 27.

health and morale.”<sup>11</sup> The research department of the Textile Workers Union of America priced this emergency budget in January-February, 1944, and found its average annual total cost to be \$1415.46 for a four person manual worker's family in the following cities: New Bedford, Mass., Lewiston-Auburn, Me., West Warwick, R. I., High Point, N. C., and Henderson, N. C.<sup>12</sup> Allowing 17 per cent for food buying habits, the total budget was increased to \$1524.64. The following table shows the amounts and proportions of the total spent on various items by a family of four at the emergency level:<sup>13</sup>

Total .....	\$1752.18	100%	
Commodities and Services .....	1524.64	87	100.0%
Food .....	642.26	36.7	42.1
Food buying habit adjustment	109.18	6.2	7.1
Clothing, clothing upkeep, and personal care .....	213.87	12.2	14.2
Housing, including water ....	200.82	11.5	13.1
Household operation .....	186.11	10.6	12.2
Miscellaneous .....	172.40	9.8	11.3
Taxes .....	52.33*	3.0	
Bonds .....	175.21	10.0	

\* Exclusive of unemployment insurance tax.

Other budget estimates made during the recent war include the one made by the Heller Committee of San Francisco in March, 1943, giving \$2991.79 as the amount required for commodities, taxes and bonds and \$2357.56 for commodities and services alone, and the Bureau of Labor Statistics survey of June 15, 1943, reporting an average of \$1651.55 needed for a maintenance budget in 98 cities.<sup>14</sup>

It must be admitted that the available data are not wholly satisfactory. Our wage and consumer expenditure statistics are often based upon estimates which have their own elements of weakness. Why, then, if the statistics are admittedly generalization should one not trust the naked eye?

<sup>11</sup> Works Progress Administration Division of Social Research, *Research Bulletin Series, No. 21*, "Quantity Budgets of Goods and Services Necessary for a Basic Maintenance Standard of Living and for Operation Under Emergency Conditions," by Margaret Loornis Stecker, Washington (1936), p. 3.

<sup>12</sup> The Textile Workers Union of America, C.I.O. "Substandard Conditions of Living," New York, p. 17 (1944).

<sup>13</sup> *Ibid*, p. 18.

<sup>14</sup> *Ibid*, p. 19.

The workers look healthy. Some of them drive to work in automobiles. They have their radios, are seen at the movies, own, or partly own, electric washing-machines. Several points must be noted in this connection.

It is true that the workers are not all-wise in spending the income that they have; that the things some of them buy would make the budgets worked out by economists and charity societies look dull and lifeless by comparison. In this, however, they are simply revealing that they are members of the human family. Man, as the anthropologists have shown, is prone to begin with luxuries and end with necessities—if he has anything left. He also apes the ways of the social class immediately above him, a trait not, of course peculiar to working classes. His natural predisposition to purchase the things he desires to gratify his vanity, at the expense of those he needs to keep him well and warm, is thus aggravated by the habits of ostentatious expenditure which the rich, whom he admires and envies, are apt to indulge. He is easily seduced by shoddy imitations of the luxuries which they flaunt before his dazzled eyes. His resistance is further worn down by the artificial stimulation of modern advertising, which subtly flatters and encourages his unfortunate preference for luxuries over necessities. The whole powerful impact of a vast system of production geared to meet the demand of a maximum consumption is in this direction. Advertising is reinforced by high-pressure salesmanship and “easy” payment plans. In normal times designers of clothing change the fashions with bewildering frequency. All the forces of cleverness and persistence and sheer physical energy which modern business organizations can command are turned loose upon the public to make them dissatisfied with what they now possess and to convince them of their need for articles which they had never heard of before or which they had regarded as superfluous. In these days the workman falls an easier prey than ever to his natural disposition toward unwise expenditure.

We may well wonder how these laboring people get along at all. If wages are not high enough to support a family, and if some of these people are utterly incompetent to spend properly the little money they do have, how do they manage to keep body and soul together from one day to the next? One way for the family to get more funds is for the wives and children to go to work, and wives and children, we know, do go to work in large numbers. Sometimes the family income includes the earnings of an uncle, or a grown-up son or daughter who belongs to the household, and always in the background are the charity organizations, wondering whether or not they should step in and supplement wages in order to keep the family

above the poverty line. When they do, of course the necessities of life are provided for.

Speak of laborers not getting enough to eat and immediately your hearer begins to look ironically about the streets for men, women, and children who are starving to death. It is probably true that not many people actually starve to death in this country. But undernourishment is another matter. No one knows how many deaths from tuberculosis, pneumonia, and other diseases, may be traced back to a lack of the right food and enough of it.

In 1916 the United States Public Health Service made a study of the relationship between low wages and sickness in seven South Carolina mill villages, the results<sup>15</sup> of which show a clear relationship between the two. For example, the disability rate per 1000 persons considered was 70.1 for families of five living on an income of less than \$460 per year and only 18.5 for those having an income of more than \$765.

The New York Tuberculosis Association made a very exhaustive analysis of the tuberculosis death rates in various parts of the Borough of Manhattan. A total of 219 sanitary areas was covered in the investigation with a total population of 2,000,000. An examination of the chart accompanying the survey reveals that the favorable areas are in the highest-class residential districts, and that the highest death rates occur in the most populous and poorest districts. The New York Health Department in a similar series of charts "has shown that tuberculosis is not the exception in varying death rates, that similar variations occur in almost these identical areas for pneumonia, measles, scarlet fever, and Bright's disease."<sup>16</sup>

Studies in other countries reveal the same general condition. Rowntree in England, Levasseur in France, and Robertson in England have all found that the death rate in the poorer sections was much higher than that in the more well-to-do sections.

Viewed from any angle, the situation appears to be that the income of many wage earners in this country is inadequate to maintain them in a reasonable degree of comfort.

#### DEGREE OF CONCENTRATION OF WEALTH AND INCOME

We turn now to a consideration of our third question. What is the relation of the wage-earner's income to the incomes of other groups? At first thought this question of inequality would seem to have no great significance. If a wage earner is receiving an adequate wage, what difference

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<sup>15</sup> *United States Public Health Reports*, 1918, 33:2038-51.

<sup>16</sup> L. R. Williams, *Tuberculosis* (Funk and Wagnalls, 1924), pp. 67-68.

does it make to him that another man is getting more? Is that any of his business? Probably the usual answer would be that it is not, that enough is enough, regardless of what other men have. But is this the truth of the matter? As R. H. Tawney says, "Hence the idea, which is popular with rich men, that industrial disputes would disappear if only the output of wealth were doubled, and every one were twice as well off, not only is refuted by all practical experience, but is in its very nature founded upon an illusion. For the question is not one of amounts but of proportions; and men will fight to be paid \$120 a week instead of \$80 just as readily as they will fight to be paid \$20 instead of \$16, as long as there is no reason why they should be paid \$80 instead of \$120. . . . The naive complaint that workmen are never satisfied, is, therefore, strictly true. It is true, not only of workmen, but of all classes of society which conducts its affairs on the principle that wealth, instead of being proportioned to a function belongs to those who can get it. They are never satisfied, nor can they be satisfied. For as long as they make that principle the guide of their individual lives and of their social order, nothing short of infinity could bring them satisfaction."<sup>17</sup>

There may be some justification for wide discrepancies in income, but to the laborer who works eight, ten, and twelve hours a day for a pittance, while he sees others working the same or shorter hours or no hours at all for enormously larger sums, it may seem a trifle obscure. Assuredly his dissatisfaction is magnified by privation but it would still persist though he were provided with all physical necessities and comforts, so long as he beheld others enjoying possessions which he could not afford. The desire to match one's neighbor's possessions, albeit in some instances more or less successfully controlled by religious and moral scruple or softened by philosophical reflection, is fairly common to mankind, at least when organized competitively.

What is the truth with regard to the distribution of income? The income structure of the United States, particularly for the year 1929, was analyzed in a study published by the Brookings Institution.<sup>18</sup> Of the total national income of 81 billion dollars in 1929, employees received in wages and salaries 66 per cent or about 53½ billion dollars. Individual enterprisers, including farmers, received 16 per cent, and investors received in interest, rents, and dividends 18 per cent. Of the employee's share, 34.1

<sup>17</sup> R. H. Tawney, *The Acquisitive Society* (Harcourt Brace, 1920), pp. 42-43.

<sup>18</sup> Maurice Leven, Harold J. Moulton and Clark Warburton, *America's Capacity to Consume*, Washington, Brookings Institution, 1934.

billion dollars was distributed as wages and 18.5 billion in salaries.<sup>19</sup> Geographically, the income was, of course, not divided equally. While the average per capita income was \$750, the average per capita income in the Middle Atlantic States was \$1107 and that of the East South Central only \$344. In general, the North East and Pacific areas had the largest per capita incomes, and the Southern states the smallest.<sup>20</sup>

More significant in portraying how much income the American worker received in 1929 and how much he could buy with it is the breakdown into "family incomes."

The 27,474,000 families of two or more persons, and averaging slightly more than four persons, received in 1929 an average of \$2800 per family, the median family receiving \$1700. The 8,988,000 unattached individuals received approximately \$1760 per capita. The highest concentration of families fell between \$1000 and \$1500, the income most frequently received being \$1300. In summary,

"Nearly 6 million families, or more than 21 per cent of the total, had incomes less than \$1000.

"About 12 million families, or more than 42 per cent, had incomes less than \$1500.

"Nearly 20 million families, or 71 per cent, had incomes less than \$2500.

"Only a little more than 2 million families, or 8 per cent, had incomes in excess of \$5000.

"About 600,000 families, or 2.3 per cent, had incomes in excess of \$10,000." <sup>21</sup>

It should be remembered that the family includes on the average a little more than four persons, that this is total income of the family, not income of the head of the family alone, and that this was in 1929. One-tenth of 1 per cent of the families with the highest incomes received practically as much as 42 per cent of the families at the bottom of the scale. About 46 per cent of the unattached individuals had incomes of less than \$1000, while a few had very great incomes.

Another Brookings survey<sup>22</sup> covered the period from 1929 to 1936 and elaborated upon the earlier study. In bringing the wage figures up to 1936, the author found that the 1929 level had not been restored. Hourly earnings had increased, but the decrease in the number of hours worked

<sup>19</sup> *Ibid.*, p. 32.

<sup>20</sup> *Ibid.*, p. 38.

<sup>21</sup> *Ibid.*, p. 55.

<sup>22</sup> Leven, Maurice, *The Income Structure of the United States*, Washington, Brookings Institution, 1938.

and the volume of employment more than counterbalanced the increased hourly earnings. Average earnings in manufacturing industries were in 1936 only 84 per cent of the average in 1929, this figure not taking into account the unemployed of 1936 who were formerly dependent on the manufacturing industries for jobs. Dividing the total pay rolls in manufacturing by the numbers of wage earners who normally depended on this industry, the author found the average earnings to be \$1250 in 1929 and only \$963 in 1936. After the 1936 income has been corrected for the decrease in the cost of living the average earnings of 1929 were still 6 per cent higher.<sup>23</sup>

In a more recent study<sup>24</sup> Spurgeon Bell throws light on the wage and low salary groups which are of particular concern in the analysis of wage trends. He estimated that gainfully employed persons make up about 43 per cent and wage employees about 23 per cent of the total population. The latter figure is raised to 30 per cent by the inclusion of low salaried employees.<sup>25</sup> This industrial group is becoming a larger part of the total population.

From 1919 to 1938 the hourly rate of earnings for these wage and low-salaried employees increased about 20 per cent, which in terms of real purchasing power was an increase of more than 45 per cent. Other factors, however, offset this increase. Since the number of hours worked decreased sharply, weekly earnings in money terms declined over 10 per cent during the 20-year period. Real weekly earnings were therefore 10 per cent above those of the beginning of the period. If wages are estimated by the year, which is the fairest index of the workers' welfare, we discover that annual money wages declined one-third during this period. Allowing for changes in the cost of living, Mr. Bell estimated that real annual wages decreased by about 20 per cent. The reason for the difference between weekly and annual earnings is that in the latter case unemployment was taken into consideration.

In the following table Mr. Bell shows the average annual wages of industrial workers from 1919 to 1938, inclusive. The wage earners "attached" to an industry are those who "normally work or seek work" in that industry.<sup>26</sup> The last two columns, one showing average annual wages for those employed, and the other including unemployed workers

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<sup>23</sup> *Ibid.*, p. 108.

<sup>24</sup> Bell, Spurgeon, *Productivity, Wages, and National Income*, Washington, Brookings Institution, 1940.

<sup>25</sup> *Ibid.*, p. 8.

<sup>26</sup> *Ibid.*, p. 20.

in the averages, are particularly valuable in revealing how much income industrial wage earners received.

ESTIMATED AVERAGE ANNUAL EARNINGS OF INDUSTRIAL  
WAGE EARNERS, 1919-38<sup>a</sup>

Year	Aggregate Earnings (In mil- lions of dollars) <sup>b</sup>	Number of Wage Earners (In thousands)		Percentage of Unem- ployment <sup>d</sup>	Average Annual Earnings	
		Employed <sup>b</sup>	Attached <sup>c</sup>		Employed <sup>b</sup>	Attached <sup>c</sup>
1919	15,369	12,581	13,720	8	\$1,222	\$1,120
1920	18,593	12,538	13,960	10	1,483	1,332
1921	13,081	10,053	13,800	27	1,301	948
1922	13,661	10,924	13,960	22	1,251	979
1923	17,188	12,509	14,090	11	1,374	1,220
1924	16,492	11,883	14,190	16	1,388	1,162
1925	17,096	12,230	14,280	14	1,398	1,197
1926	18,010	12,765	14,360	11	1,411	1,254
1927	17,793	12,558	14,420	13	1,417	1,234
1928	17,596	12,391	14,450	14	1,420	1,218
1929	18,267	12,832	14,480	11	1,424	1,262
1930	15,187	11,359	14,520	22	1,337	1,046
1931	11,309	9,430	14,600	35	1,199	775
1932	7,536	7,675	14,700	48	982	513
1933	7,376	8,061	14,840	46	915	497
1934	9,242	9,335	15,080	38	990	613
1935	10,521	9,942	15,430	36	1,058	682
1936	12,644	11,064	15,800	30	1,143	800
1937	14,794	11,921	16,100	26	1,241	919
1938	12,062	10,256	16,300	37	1,176	740

<sup>a</sup> Comprises employment in manufacturing, railroads, mining, and construction. These industries represent about 90 per cent of total industrial employment. (This and the following footnotes to the table are from Bcll.)

<sup>b</sup> See footnotes on p. 239

<sup>c</sup> For method of estimating, see App. C, p. 239. As noted in the appendix there was no doubt considerable over-reporting of industrial attachment in the 1937 *Census of Unemployment*. Although we have tried to allow for exaggeration, it is probable that our estimates of attachment in this year and other depression years are high.

<sup>d</sup> Computed from two preceding columns.

<sup>e</sup> Aggregate earnings divided by the number of wage earners attached to industry.

Another study of the distribution of income in the United States was made by the National Resources Committee for the year 1935-1936. The



results of the Committee's research were published in two reports<sup>27</sup> and summarized in a pamphlet of June, 1939.<sup>28</sup>

According to this summary report, there were in 1935-1936 approximately 29 million families and 10 million men and women living alone. The national income for the year 1935-1936 was \$59 billion. If the total income had been equally divided among these 39 million consumer units, each unit would have received about \$1500. About 65 per cent of the families, however, received less than \$1500; 42 per cent received less than \$1000, 3 per cent of the units received \$5000 or more, and about 1 per cent received \$10,000 or more. This 1 per cent received over 13 per cent of the aggregate family income, whereas the 42 per cent receiving under \$1000 received 16 per cent of the aggregate. If we combine individual and family incomes, we find that the tenth of families and individuals receiving over \$2600 received 36 per cent of the total consumer income of 1935-1936, or about the same proportion as the 70 per cent of families and individuals with incomes under \$1540. In other words, the highest 10 per cent received about the same as the lowest 70%. The one-half of 1 per cent at the top of the income scale, 197,000 families and individuals, received about the same amount of income as supported almost one-third, 13 million families and individuals at the lower end of the scale. In 1935-36 one third of all families and single individuals received incomes of less than \$780, and two-thirds received less than \$1450.<sup>29</sup>

When consumption patterns are studied, approximately the same picture is presented except that the inequalities are evened out somewhat by negative saving on the part of the lower groups and by gifts, taxes, and savings not entering into consumption in the upper income groups. The lower third spent on the average more than half of their average income of \$471 on food, \$236 as compared with \$404 spent for food in the middle group, and \$642 by those in the upper third. On a per capita basis, this is \$1.60 a week for the lower third. The average person in the lower third spent only \$16 yearly for clothing, contrasted with \$32 per person in the middle group and \$73 in the upper group. For housing, the lower average was \$10 per month; for the middle group, \$17; and for the upper, \$34 a month. Adding the cost of household operation brings these figures to \$15, \$28, and \$60 per month, respectively. The lower and middle groups spent roughly four-fifths of their income for food, clothing, and shelter. Inci-

<sup>27</sup> *Consumer Income in the United States and Consumer Expenditure in the United States*, Washington, National Resources Committee, 1939.

<sup>28</sup> *The Consumer Spends His Income*, Washington, National Resources Committee, 1939.

<sup>29</sup> *Ibid.*, pp. 4-7.

dentally, the lower third spent the smallest proportion for automobiles, of the items classified, whereas in the middle third education ranked smallest; and in the upper third food was the smallest item. The lower third spent about 5 per cent of the aggregate national expenditures for automobiles, the middle third 20 per cent, and the upper third 75 per cent.<sup>30</sup>

This study of the National Resources Committee was made in a semi-depression year, 1935-36, so that the general picture of the adequacy of the income of various groups is not as bright as 1929 nor as black as 1932. The Brookings study for 1929, however, revealed most incomes inadequate to provide the standard of living which we intuitively think of as the American standard. Indeed, all studies of income and consumer expenditure present the same general picture of constant deprivation and hardship for a large proportion of the people.

The problem of inequality of distribution may be studied also with a view toward ascertaining how the stock of goods, or wealth, is distributed among the total population. The results of this study may then be compared with our findings regarding the distribution of income, which is the flow of goods during a period. The contributions of W. I. King, a leading student of this subject, are in part embodied in the Federal Trade Commission study completed in 1926.<sup>31</sup> Among other things the Commission examined the records of all the estates in 24 counties located in 13 typical states, covering the period 1912-1923 inclusive. Data were secured on 43,512 estates. It was estimated on the basis of census mortality reports that there were 141,446 estates which were not probated. The average value of these latter estates is fixed by the Commission at \$258, this being the average value of probated estates under \$500. It is assumed that all of the larger estates were probated and that those not probated were the smallest. From the data gathered it appears that a little more than 1 per cent of the estimated number of decedents owned about 59 per cent of the total estimated wealth of the decedents. Less than 1/400 of the total estimated number owned over 1/3 of the total estimated wealth of the whole group. Another interesting revelation is that, although the average for the group was \$3827, more than 90 per cent of the total estimated number had estates valued at less than this amount.

Care must be exercised in drawing conclusions from these data. It must not be supposed that they afford an exact statement of the distribution

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<sup>30</sup> *Ibid.*, pp 24-29.

<sup>31</sup> A summary of the findings of the Commission with regard to the distribution of wealth is given in an elaborate table in *National Wealth and Income, A Report by the Federal Trade Commission*, Senate Document No. 126, p. 58 (1926).

of wealth ownership. Some error is probable inasmuch as they are largely based upon estimates. Even allowing a generous margin for error, it is evident that wealth is distributed very unequally in this country.

An earlier study of somewhat more limited scope bears out this conclusion. In 1915 W. I. King made an analysis of the records of the probate courts of Massachusetts covering a period of about sixty years from 1829 to 1891 and of the wills probated in certain sections of Wisconsin in the year 1900. The evidence in a simplified form is presented in the following table:

SECTIONS OF THE POPULATION CLASSIFIED ACCORDING TO  
WEALTH OWNERSHIP<sup>32</sup>

Section of Population			Per Cent of Total Wealth	Average Value of Wealth
Poorest 65 per cent	Mass.	1891	4.5	\$ 399
	Wis.	1900	5.2	384
Lower middle Next 15 per cent	Mass.	1891	3.9	1,499
	Wis.	1900	4.8	1,524
Upper middle Next 18 per cent	Mass.	1891	32.8	10,509
	Wis.	1900	33.0	8,730
Richest class Next 2 per cent	Mass.	1891	58.8	169,550
	Wis.	1900	57.0	135,715

A remarkable similarity is manifested by the two groups of statistics. Furthermore, the results are not essentially different from those obtained in the more comprehensive study made by the Federal Trade Commission, although the latter indicates a somewhat greater degree of concentration.

#### IS CONCENTRATION OF WEALTH INCREASING?

One of the important questions relating to income is whether the inequality of income and wealth is increasing. The original Marxian interpretation that the "misery of the poor" was increasing absolutely has generally been abandoned, since workers' incomes have unquestionably

<sup>32</sup> W. I. King, *Wealth and Income of the People of the United States* (Macmillan, 1915), p. 79.

risen during the past several centuries, but a real problem arises as to whether the *relative* position of the worker is better or worse.

Strong arguments appear on both sides of the question. On the one hand, it is argued that "wealth begets wealth." Difference in capacity lead to difference in wealth, and this difference is increased by the advantages derived from a favorable environment and from heredity. To inherit property is to inherit opportunity. The man who starts out with capital and independent income has a head-start and may be expected to accumulate greater and greater riches. It is argued, also, that during depressions the very wealthy take over the holdings of the not quite so wealthy and so improve their positions for the next upswing.

On the other side, it is pointed out that great wealth is dissipated after three or four generations, that the qualities necessary for the accumulation of wealth are not developed by a favorable environment and heredity of property. It should be point out, also, that if we accept the marginal productivity theory of distribution, the shares going to capital and labor are determined by the relative quantities of each, and since population is falling off and capital increasing in quantity, we should expect wages to rise and returns on capital to fall. These general trends may not continue, however, and any number of other factors may influence the theoretical expectancy.

In a recent book<sup>33</sup> which discussed this question in detail the authors drew up four tests of the relative progress of workers. The first of these tests (a comparison of the movement of real wages with the trend of physical production or real national income) resulted in the following conclusions: (1) From 1929 to 1933 those workers who kept their jobs did not lose as compared with the other economic classes, but there was a drop of between 14 and 15 per cent in per capita real income. (2) The vast amount of unemployment following 1929 decreased the real earnings of the working class more than it decreased the per capita real income of the total population. The total amount paid out in wages during this period declined considerably more than any of the other distributive shares. (3) As far as the authors are able to determine, the real income of the working class increased after 1933 as much as did the real income of the other members of the population.

A second test was made by comparing the trend of real earnings with the trend of value product per employee. It was found that real earnings lagged behind value product per worker after 1925.

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<sup>33</sup> Harry A. Millis and Royal E. Montgomery, *Labor's Progress and Some Basic Labor Problems* (McGraw-Hill, 1938), pp. 136-174.

The third test which examined "the proportion of total value created by each line of economic activity, and of the sum-total income created by all lines of activity, going in the form of wages and salaries" revealed the following trends: (1) Over the period from 1900 to 1929 the share of the national income going to workers increased from 53.2 per cent in 1900 to 65.1 per cent in 1929. (2) This increase does not contradict the authors' earlier statement that workers' real earning have lagged behind per capita real income, however, since the number of persons employed has increased faster than total population. (3) The proportionate shares of the national income going to wage earners and to salaried workers increased at approximately the same rate. (4) The share going to independent farmers decreased from 12.6 per cent in 1909 to 6.8 per cent in 1929. (5) The share going to entrepreneurs decreased from 26.2 per cent in 1909 to 17.3 per cent in 1929. (6) The share going to investors remained relatively stable. (7) The foregoing figures do not indicate that entrepreneurs and employees are gaining at the expense of investors and property holders.. Instead, 75 per cent of the national income was "occupational income" in 1909 and 1929, the amount varying not more than 4 per cent in any one year during this period.

The fourth test of labor's progress was an analysis of the relation between labor's earnings and the exchange value it created. The authors conclude that in those studies which have been made there seems to be a fairly close correlation between labor's productivity and its reward.

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We hear a great deal about the physical aspects of the wage-earner's life, about the effect of modern industry upon his health, about the dangers to his life and limbs, about the diseases which prey upon him and his family because of poverty. To the laborer himself these probably seem his worst grievances. These are the theme everywhere of his discontent; these form the basis of his organized demands. Equally important, however, and possibly more so, are what we may call the spiritual aspects of his life. The worker himself may be unaware that this is so, he may not recognize that he is groping for something above and beyond material things, that indeed it is largely for the sake of this intangible good that he struggles for material advancement. But the truth is that every phase of the laborer's economic life has its intangible aspects, and that these by no means defer in importance to the physical ones.

Suppose the laborer is out of work and he and his family are not getting enough to eat. Do they suffer more from the emptiness gnawing at their stomachs or the fears gnawing at their minds? Each from his own bodily discomfort or his distress on the others' account? Is it not possible that the worst feature of the whole evil of unemployment is the worker's ever-present fear of losing his job? The physical and the spiritual are inextricably interwoven in every one of the worker's grievances. Every physical ill brings mental suffering in its train and to some extent the reverse is true also. If the mental side of the worker's grievances is neglected, or nearly so, in most discussions, it is not because this is negligible. A better understanding of the close affinity existing between physical and spiritual well-being could profitably be cultivated by both the worker and his adviser, not to say the general public, which cannot yet be said to have attained either perfect comprehension of the worker's grievances or perfect wisdom in dealing with all of them.

It is important to realize that for the great mass of people the good life is dependent upon the possession of at least a certain minimum of physical goods. To be sure, we recall that the Son of Man had not where to lay His head, and we are assured that despite an intimate acquaintance with grief He lived a truly happy life. We think of Buddha, of Bunyan, of St. Francis, of Walt Whitman, of Thoreau. Rare souls have been and will be again who by virtue of some mystic insight are enabled to achieve an inner harmony which it is beyond the power of things or events to disturb. To these wealth and the lack of it are all the same. But their ways are not the ways of us ordinary men. Seeing as we do through a glass, darkly, we are frankly dependent upon material things. The words of William Graham Sumner, spoken after a lifetime spent in the study of human society bear repetition, "A man whose soul is absorbed in a struggle to get enough to eat, will give up his manners, his morals, his education, or that of his children, and will thus, step by step, withdraw from and surrender everything else in order simply to maintain existence. Indeed, it is a fact of familiar knowledge that, under the stress of misery, all the finer acquisitions and sentiments slowly but steadily perish."<sup>34</sup>

It is because man is a psychical being that he is concerned not only with absolute amounts but with proportions. He may be able to keep his stomach full and his body warm and dry, but that is not enough. If his income is less than his neighbor's, he will probably be dissatisfied. By the same token, if he is in want, his misery and his indignation will be greatly intensi-

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<sup>34</sup> W. G. Sumner and A. G. Keller, *The Science of Society* (Yale Press, 1927), vol. 1, pp. 62-63.

fied by the sight of others enjoying plenty. We do not know what justice is, but we do know that man has within him vast reservoirs of wrath and hatred which break forth in torrents when he feels himself to be the victim of injustice. Failure to take account of the psychological aspects of the distribution of wealth has led some to the false conclusion that the labor problem could be solved by increasing production.

The great amount of dull, monotonous work that laborers are called upon to do at the present time and their consequent inability to derive any satisfaction from it must be numbered among the important intangible factors to be taken into account in considering the grievances of the wage earner.

Another factor of the intangible sort lies in the worker's desire for control. He likes to have good food and good clothes and a comfortable house, and much of his organized activity is concerned with the obtaining of these very desirable things. But he likes equally well to choose these things for himself, and to have some say in general about the ordering of his life. Always men have loved power, and the working man is no exception. Power over his fellow is probably beyond his reach, but at least he wants some authority over himself. Some of the employers have not perceived this or they would not have been so surprised when their employees received rather coolly their various offerings of welfare work. Yet it is shown clearly in the union's program of collective bargaining, which comprises not only wages, hours, and working conditions, but also *control* over these things. In fact so prominent is this feature of the union program that Professor Hoxie designated collective bargaining as "a step in the process of control."

Finally there must be mentioned man's burning desire to talk about his troubles. If he is not allowed to do this or is in any way limited as to the manner in which he may do it, the troubles themselves become greatly magnified and another most serious cause of discontent is added to the already lengthy catalogue. Free speech must take its place among the major desires of the workers as of other groups in society.

We have enumerated a long list of grievances cherished by the wage earners. It must not be thought that all laborers at all times are protesting about all these physical and mental irritants. Men cannot always analyze their discontent, and not all men, of course, are affected in the same way. Some of the grievances mentioned will hardly touch some working men. The fact remains, however, that these causes for discontent are present in our industrial system, as is evidenced by the continued raging of the industrial conflict with no perceptible decrease in severity.

PART III  
THE WAGE EARNER



What has the wage earner himself done concerning his grievances? First and foremost he has organized for the purpose of bargaining collectively with the employer, and this is the method of improving his economic status in which, up to the present, he has placed his greatest reliance. He has also sought through organization to make use of the political method, sometimes for direct economic gain, sometimes simply to make his collective bargaining more effective. Rather recently he has also invoked that beloved panacea for all ills—education. The story of the wage-earner's activities concerning his grievances is largely a story of the development and use of these three methods of action.

## CHAPTER V

### DEVELOPMENT OF ORGANIZED LABOR

THE historical development of organized labor is a subject that must be approached with some degree of caution. It would be the easy and not unnatural thing to attribute to the participants in this development a foreknowledge and a perspective which participants cannot possibly have. The course of the development was determined not by any long look into the future or any long-time planning but very largely by the play of economic forces. There was nothing deliberate about it. Various types of labor organizations sprang up at different times to meet different conditions. In general the type best adapted to the economic situation at hand was the type that survived. Always there has been a minority, sometimes there has seemed to be a majority, challenging the existing type and battling to organize on the platform of adapting the economic conditions to the organization rather than the reverse.

Up to 1935 but very slight success rewarded the efforts of these reformers. The tide of economic forces has swept on, bearing on its broad bosom the institutions of human society. It is they rather than the economic forces that have had to do the adapting. Labor organization has been no exception. It, like the rest, has been shaped to a very large extent by its environment. Successful labor leaders have been those who have sensed industrial changes and have patterned their organizations accordingly. The history of organized labor records many an ill-starred attempt at adaptation; but some men there have been who have not only realized the necessity for conformity to existing conditions but have clearly perceived what those conditions were and in what ways they were changing and so have managed to steer a safe course.

We see, then, that labor organizations have had to be largely a matter of trial and error. That is why the eye catches no striking divisions or periods, each with its own single characteristic type of organization perfectly adapted to the particular phase through which industrial activity was then passing. Any attempt to systematize the history of organized labor must be made with a full recognition of the likelihood of deviation. Upon close scrutiny we find that periods may be marked out in which certain

types of organization were dominant, but conditions were always changing and other forms were competing; so that these periods, far from being separate and distinct, were but stages in a process of evolution, one merging into another. Possibly no two students would sketch them in alike except for the broadest outlines.

#### ENGLISH BACKGROUND

Associations of workmen probably go far back into history, but as the Webbs have convincingly shown,<sup>1</sup> the first ephemeral organizations were no near kin of the modern labor organization. Nor is the latter a direct descendant of the craft guild so prevalent in England for many years. The medieval craft guild was an organization of master craftsmen, who were their own employers and did not depend upon any other employer for wages. The modern labor organization saw its beginning when the wage earners, employees securing wages from employers in exchange for their services, organized for the purpose of improving their economic condition.

The rise of labor organizations in the eighteenth century was due to changes taking place in the industrial organization. The great mass of workers were ceasing to be independent producers. As industry expanded more and more, capital was needed and it became less and less feasible for the worker to own the instruments of production. This development was not wholly the result of the introduction of the machine and the development of the factory system, though these changes gave tremendous impetus to it. As far back as 1720 tailors' unions in London were agitating for higher wages and shorter hours. Earlier even than that, woolcombers and weavers were organizing. It should be noted, however, that these earlier organizations were engaged in no such bitter and seemingly hopeless struggle as that waged by the organizations growing out of the industrial revolution. Many were merely trade clubs, and most were composed of skilled craftsmen rather than of workers suffering great oppression.

The first immediate outgrowth of the industrial revolution was a series of appeals to Parliament for protection. This type of effort was not new since for years the government had exercised a large measure of control over industry. Unfortunately for the workers, a transformation in political attitude was taking place concurrently with the tremendous changes in industrial organization. The doctrine of *laissez faire* was sweeping the country and with the help of the manufacturers had determined

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<sup>1</sup> Sidney and Beatrice Webb, *History of Trade Unionism* (Longmans, 1920), Ch. I.

the government's attitude toward the workers as well as toward other aspects of economic life. The result was a long series of rebuffs for the workers with now and then a sympathetic hearing.

In course of time the laborers gave up this method in despair and began to organize—only to meet equally powerful opposition on that front. The Combination Acts of 1799 and 1800 were among the most stringent of their kind in English history, prohibiting any sort of organization. Although theoretically they were applicable to employers as well as to employees, there is no evidence that they greatly inconvenienced the employers' associations. These were probably the lowest depths to which the laborers ever sank in England. Brusquely denied aid by Parliament, they were now forbidden to help themselves.

Francis Place describes their condition as follows: "The sufferings of persons employed in the cotton manufacture were beyond credibility; they were drawn into combinations, betrayed, prosecuted, convicted, sentenced, and monstously severe punishments inflicted upon them; they were reduced to and kept in the most wretched state of existence. . . . Justice was entirely out of the question; the working men could seldom obtain a hearing before a magistrate—never without impatience and insult; and never could they calculate on even an approximation to a rational conclusion. . . . Could an accurate account be given of proceedings, of hearings before magistrates, trials at Sessions and in the Court of the King's Bench, the gross injustice, the foul invective and terrible punishments inflicted would not, after a few years have passed away, be credited on any but the best of evidence."<sup>2</sup>

But the Combination Acts did not destroy the labor organizations. Combinations still managed to maintain themselves, for the most part in secret, and in some of the chief handicrafts attained considerable strength. After a quarter of a century of starvation wages, of whips and scorpions and prison confinement, relief came with the enactment of the famous laws of 1824 and 1825. Thus did the tireless efforts of a small group of loyal, energetic, and fearless leaders come to fruition. Labor was now freed from the ban which had lain so heavily upon it since the year 1799 and 1800. To bring this about, Francis Place, the tailor of Charing Cross, did yeoman service in the face of determined employers and apathetic workers. Taking no small part in the enterprise were J. R. McCullough, editor of a provincial newspaper, and Joseph Hume, member of Parliament and a leader in the radical party.

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<sup>2</sup> C M Lloyd, *Trade Unionism* (Black, 1915), pp. 6-7.

The millennium for labor organization had not yet arrived, but a start toward effective development had been made. Labor was to pass through other times of trial and discouragement, but was to grow in wisdom and in stature until the trade union had secured for itself a dominant place in the social structure of Great Britain.

#### BEGINNINGS IN AMERICA<sup>3</sup>

Up to this point the beginnings of organized labor in Great Britain may be regarded as part of the background of the American labor movement. Although in later years the two movements have diverged somewhat, it should be remembered that they branched off from a common trunk whose roots lie buried deep in English soil. Particularly during the colonial period, and for some years after the Revolutionary War, the law, the philosophy, the manners, and the morals of the two countries were under the sway of one and the same tradition. To understand the labor movement as it is today in the United States, we must know something of its source. This, as we have seen, was a movement arising out of the incredible miseries endured by the working people of England during the late eighteenth and early nineteenth centuries, miseries so dire that had it not been for the dogged determination of a few leaders the great mass of toilers might have sunk into utter despair.

Labor organization did not take definite form in the American colonies. There was no permanent class of wage earners. Industry had not yet reached the stage of development in which it calls for large outlays of initial capital. Those types of labor organization which had arisen before the latter half of the eighteenth century were of a different stripe from the modern forms. They were either, as in England, craft guilds of workmen who combined in themselves the functions of laborer and master as well as merchant, or benevolent societies which had as their chief function the aiding of members in distress and the providing of social activities. Neither type was engaged in a struggle with the employer over wages, hours, and working conditions.

Toward the close of the eighteenth century, however, the United States began to feel the impact of the industrial revolution. This did not mean that the wage-earner class emerged immediately. There was still a chance for the journeyman to become a master craftsman, and class consciousness

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<sup>3</sup> For the history of organized labor in this country we are indebted to John R. Commons, David J. Saposs, Helen L. Summer, E. B. Mittelman, H. E. Hoagland, John B. Andrews, Selig Perlman, *History of Labour in the United States*, (Macmillan, 1918).

would exist only in embryo as long as that chance was a real one. As the market widened and the use of the machine increased, with the resulting development of commerce on a larger and larger scale a new figure in the form of the "merchant capitalist" appeared on the industrial landscape. This person bought and sold goods on the most profitable markets, thus widening the area of competition within which prices and wages were determined. As time went on, it became necessary to have larger and larger amounts of capital in order to engage in productive enterprise. This meant that it became harder for the journeymen to advance to a higher class; and the harder it got, the more concerned they became about their wages. If they were going to remain wage earners more or less permanently, it behooved them to make wages and other conditions of employment the primary interest of their economic life. Under the pressure of these changes, the wage earners gradually became somewhat class conscious and began to look around for some effective means of protecting their class interests.

It was only natural that they should turn to organization. They had already begun to protest. In 1786 the Philadelphia printers though not formally organized into a trade union went on strike for a minimum wage of six dollars a week. This, as far as is known, was the earliest genuine labor strike in America. The second recorded strike occurred when the house carpenters of Philadelphia struck for the ten-hour day. There were other protests; but such short-lived demonstrations, though a sign of growing discontent, by no means constituted organization. The first continuous organization of wage earners for the purpose of maintaining or advancing wages came into being when the shoemakers of Philadelphia organized in 1792. Even this organization hardly lasted the year.

In 1794 these same shoemakers again organized and this time maintained their union at least until 1806. In 1799 they conducted the first organized strike on record, of nine or ten weeks' duration. Other organizations began to appear. The printers of New York organized in 1794; between 1800 and 1805 the printers in Philadelphia and Baltimore organized, and the shoemakers in New York and Baltimore. Still other groups did likewise, but few maintained themselves for long. As a matter of fact, up to 1820, the printers and the shoemakers were the only groups showing a continuous and persistent effort to organize. One reason for the early collapse of these organizations was the fairly large number of convictions in court for conspiracy, but more significant was the industrial depression which set in after the close of the Napoleonic Wars. For the time being, effective labor organization came to an end. After the depression touched bottom in 1820, organizations began to spring up once more. Hat-

ters, tailors, weavers, nailers, cabinet makers, were some who united into aggressive trade unions.

These early organizations took the form now known as the local craft union. They were very limited in scope, being restricted to a specific trade in a specific locality. In the light of our present knowledge of trade-union organization this does not appear strange. These men were interested primarily in protecting their own interests, and for this purpose an organization covering the area of competition was the only effective kind. The crafts did not compete with each other, and the market had not become extended beyond the territory compassed by a local organization.

These early organizations were made up of skilled workers only. They had as their purpose the protecting of the interests of their members, these interests including wages, hours, and conditions of work as well as the care of the less fortunate members. They were somewhat tinctured with the spirit of the benevolent societies that had preceded them and we find evidence of their having mutual insurance and sickness and funeral benefits. As the significance of the economic struggle with the employer increased, these benevolent features, though retained in most of the unions, became secondary to collective bargaining, regulation of hours, wages, and conditions of work, exclusion of illegal men, defense against prosecutions, and the like.

#### POLITICAL AND SOCIAL AGITATION

The period which has just been reviewed was marked by the organization of the wage earners into local craft unions for the purpose of improving their economic condition through collective bargaining. The period which we now enter, though it witnessed the rise and fall of a number of phases of workmen's activity, had as its distinguishing feature the continual recourse to political agitation as a means of reforming economic and social conditions.

So far as is known, the Mechanics' Union of Trade Associations organized in Philadelphia in 1827 was the first city central organization of trades in the world. This developed into what was probably the first labor party in the world—the Workingmen's Party. For several years the Workingmen's Party was a political force important enough to obtain a number of concessions from the older political parties. This was a time of social experiment when most of the classes in society were either urging the application of various political doctrines to political affairs or were actually at-

tempting to make the application themselves. Labor's invasion of politics was therefore quite in tune with the times.

The Philadelphia organization was followed by a labor party in New York City. The movement spread throughout New York State and elsewhere. In fact every state in the union with the exception of New Hampshire showed some signs of political activity among the laborers. This first period of political activity lasted until about 1834. The agitation was not particularly effective, though some of the desired reforms were incorporated in the platforms of the major parties. It seemed that the men behind the movement could not furnish enough momentum to carry it along. As a by-product it did something to break down the rigid craft lines which had heretofore been so prominent in the labor movement.

There was a reaction before long against political activity as a method, although the particular issues continued to loom large in labor's thinking. The number of trade unions increased rapidly, the development being accelerated by the prosperity of the early thirties. Not only were numerous trade unions organized but there evolved a tendency to federate these into trades unions, or city associations of craft unions. A number of national unions were organized too; but this phase of the movement proved to be premature, as the national organizations were short-lived. There was evident a growing consciousness of an interrelationship among the interests of laborers, at least among those of the skilled class. The unions and the federations of unions brought pressure to bear upon the major political parties to enact favorable legislation having to do not only with wages and hours but with such matters as factory conditions, competition of women and of prison labor, freedom of public lands, and cooperation. Although the methods had changed and the unions had regained their old prestige, the inclination to rely upon the state for aid still persisted.

The crisis of 1837 brought the trade-union movement to a sudden halt. Not only were new unions prevented from organizing, but most of those aggressive unions which in the early thirties had fought vigorously and at times successfully to ameliorate labor's condition were practically wiped out. It is always difficult for trade unions to carry on in the face of a business depression and these early groups had not the resources necessary to weather the storm. When there is general unemployment and when those who are fortunate enough to obtain work must accept low wages, the general unrest and discontent make fertile soil for the reformer, the dreamer, the political and social theorist, the fanatic. These bad times were no exception. The idealists were not slow to put in an appearance and soon



were in possession of the social forum. The laborer himself was little heard. He was supposed to listen. Not infrequently he yielded and joined the band of reformers and theorists, knowing not whither he was going but glad to be on his way.

Thus, for the first time in its history, the American labor movement, if this can be called a phase of the labor movement, was dominated by the so-called intellectuals. Most of the reform groups were doomed to failure from the start. Others, confining their activities to agitation for specific legislative changes, such as land reform, free schools, and restriction of child and woman labor, had better chances of success. Utopian propaganda swept the country. Communistic and cooperative experiments sprang up like mushrooms. Attempts were made to form political parties with idealistic, humanitarian, and democratic aims. The trade unions practically ceased to exist and the part they played in the activities of the period was small indeed. In general, the wage earner became merely a puppet in the hands of impractical visionaries.

#### ORGANIZATION ON A NATIONAL BASIS

The early fifties, following upon the discoveries of gold in California and Australia, saw an immediate and rapid rise in prices. Business began to convalesce and soon was in a state of feverish activity. The laborer deserted the reformer and turned back to the weapon of his own making, the trade union.

Other economic forces favored the resuscitation of the union. More and more was the machine gaining control of the economic structure, bringing to the capitalist an increased importance and widening the gap between the employer and the employee. Developing transportation expanded the markets and broadened the area of competition. The trade unions had come back on the scene to play a more and more prominent part.

As the area of competition broadened, the need for a more conclusive form of labor organization was felt. There was no return to the city trades unions which had characterized an earlier period; but some of the workers were experiencing competition from their own fellow-craftsmen in other parts of the country and organization on a national scale had begun to seem not only desirable but in some cases quite necessary. The Typographical Union, of national scope, was organized in 1850. The stone cutters organized nationally in 1853, the hat finishers in 1854, the locomotive engineers in 1855, the iron molders, the machinists, and the blacksmiths in 1859. Other unions tried to organize nationally but failed. The

aims of all these organizations were strictly economic and concerned with the immediate interests of their members, chiefly higher wages and shorter hours. Like all periods of great industrial activity, this was a time of many strikes.

Revival of the trade-union movement had barely got under way when the panic of 1857 put a check on industrial enterprise for the time being. The unions were for the most part swept away. Unemployment, low wages, and general industrial disorganization became the rule. During the Civil War, however, the government's policy of inflation brought back high prices, with increased cost of living. War activities, with their demands for war goods and a decrease in the productive population, resulted in an increased demand for labor. The gain was not immediate, largely because of the higher cost of living brought about by inflation. But the incentive to organize had been supplied, and many local unions which had disbanded gathered themselves together again. Thirty city trade assemblies had organized before 1865, and a number of national bodies date from this period, two having been organized in 1863, four in 1864, and six in 1865.

Throughout the period of the war the number of strikes was small. In many cases, probably because the employers were making large profits and did not think it worth their while to resist, organization itself seemed to be enough of a threat to enforce the workers' demands. It may be, too, that the unions, realizing that the public resents strikes in wartime, decided to confine themselves to other expedients.

The period was marked by momentous developments in the labor movement. First, the labor press was established on a lasting foundation. At least 120 daily, weekly, and monthly journals were started during the years 1865-1873. One of the most influential labor papers of the period and one of the best ever published in the United States, Fincher's *Trades' Review*, made its initial appearance on June 6, 1863. Equally significant to the labor movement was the beginning of employers' associations with the organization on a national basis of the employers in the stove-molding industry. Most of the associations were local, including the employers of one or more trades of a particular locality. Their activities were directed not so much against the national unions as against the local unions and the trades assemblies.

#### ATTEMPTS TO AMALGAMATE

The events of the war were such as to draw labor together on a national scale. We have seen that a number of national unions were

organized during the war period. This movement persisted through the years immediately following the war, with a temporary check during the postwar depression, there being no national unions organized in 1866 and but one in 1867. In 1868 two were organized, and in 1869, three. Perhaps the outstanding feature of the postwar period consisted in various attempts to amalgamate the national craft unions already organized.

The first of these attempts took place when the National Labor Union was organized in Baltimore in 1866. This federation did not represent craft unionism strictly, its basis being the city assemblies of trade unions. Also, it did not limit its activities to the immediate improvement of wages and hours, which is the chief aim of the craft union. It placed a great deal of emphasis upon producers' cooperation. Sylvis, the prime mover, was a good unionist but he was also a hearty believer in cooperation and kept that phase of the program constantly in the foreground. Agitation for favorable labor legislation was also part of the program, and in this the National Labor Union was somewhat more successful. At any rate it is given some credit for getting the first national eight-hour law passed in 1868, and its agitation for Chinese exclusion probably had something to do with the adoption of the act of 1882. As in earlier periods labor's political agitation was most effective when bringing pressure to bear upon the major parties.

The idea of a national federation of city assemblies did not make a wide appeal. The city central organizations were more interested in local politics than in national doings. To this day the city central has remained primarily a local organization, stoutly resisting any attempt to turn its attention to national affairs. The National Labor Union had made a number of unsuccessful ventures into the field of cooperation. The iron molders, Sylvis' own union, owned at least ten cooperative foundries, all of which failed; and other undertakings of a like nature fared no better. The National Labor Union was unfortunate, also, in falling into the hands of political reformers. Finally in 1870 it disbanded.

In 1872 a call was issued by four national unions to organize a national labor federation on a purely trade-union basis. A convention was held in 1873 and the National Industrial Congress, popularly known as the Industrial Brotherhood, was organized. The panic of that year, with its resulting industrial depression, doomed the organization to failure from the start. The national craft organizations were fighting for their own lives and had no time for federations. At the third and last congress of 1875 only the printers' union was represented.

THE KNIGHTS OF LABOR AND THE AMERICAN FEDERATION  
OF LABOR

The panic of 1873, one of the severest in our history, was quite as disastrous in its effects upon the labor movement as any previous panic, possibly more so than any other. Wounded and exhausted, their resources depleted, the craft unions struggled, for the most part in vain, to keep up the fight. Most of the national organizations were annihilated. Of the thirty-two in existence in 1870 only eight pulled through. Membership in the locals throughout the country declined woefully. Those that survived resisted wage cuts as best they could, but were practically powerless in the face of adverse business conditions. A feeling of resentment seized upon the wage earners, manifesting itself in prolonged and bitter strikes. Violence became common though unsanctioned by the unions. The Molly Maguires played havoc in the coal districts of Pennsylvania. The first great railroad strikes occurred, and the first known clash between federal troops and organized labor. This was truly a time of tribulation for the wage earner.

Surviving the disaster wrought by the panic of 1873 were two groups which were destined to play important parts in American labor history. One was the Noble Order of the Knights of Labor and the other a group of trade unionists centering around the International Cigar Makers' Union. The Knights of Labor had its origin among the garment cutters in Philadelphia in 1869, where it was founded by Uriah Smith Stevens, a tailor, as a secret organization. It soon began to branch out and to embrace other workers outside the garment trades. For a period of nine years it remained a secret society, but finally in 1878 it was forced to come out into the open, largely because of the general hatred of secrecy which had been aroused by that criminal body, the Molly Maguires.

The Knights' program as announced in their Preamble of 1878 was highly idealistic. The main planks in their platform were union of all the workers, education, and producers' cooperation, and these remained the cardinal points in their philosophy. The organization came under the leadership of Terence V. Powderly, twice mayor of Scranton, Pennsylvania, on a labor ticket. In direct opposition to the philosophy of Samuel Gompers, who was to supplant him later as the outstanding labor leader of the country, Powderly held that the great hope of the laboring class lay in self-employment through cooperation; and so producers' cooperation came to be an important plank in the Knights' platform. The Knights were really successors to the coöperative movement of the forties and the sixties.

In theory the structure of the Knights of Labor was highly centralized—and incidentally this was to be a chief cause of its decline. The national assembly with its permanent officers exercised absolute authority over the district assemblies and these latter were in turn given authority over the local units. Thus there was erected an autocratic structure with the final authority between conventions resting in the permanent officers and standing committees at the top. The organizers desired to gather all the workers in the land into one well-organized group and to make that group sufficiently mobile to act as a unit. It was in order to provide this mobility of the group as a whole that the authority was made so extremely centralized, and not unnaturally one of the protests of the craft workers, a minority in number, was directed against this centralization.

The earlier local assemblies were usually composed of men from the skilled trades; but the later ones were more generally mixed, with skilled and unskilled laborers sitting side by side. Even men who were not wage earners at all were welcome to join, though later on the number of these was limited, in the new locals formed, to one-fourth of the membership. Another interesting restriction was "that no person who either sells or makes a living, or any part of it, by the sale of intoxicating drink, either as manufacturer, dealer or agent, or through any member of the family, can be admitted to membership in this order, and no lawyer, banker, professional gambler or stock broker can be admitted."

We see that the structure of the Knights was strikingly different from that of the union organized along craft lines. Directly related to this structure was, of course, their program of action, which concerned itself with general social policies as well as with immediate gains in wages and hours. The purpose of the Knights was to improve the general condition of all labor.

Let us leave this all-inclusive organization for the moment and turn to the second of the two groups which survived the depression of the seventies. This group figured prominently not only in the future history of the Knights of Labor but in the history of American labor as a whole. The group centering around the Cigar Makers' Union afforded from the beginning a sharp contrast to the Knights of Labor. The programs and the philosophies of these two organizations came into more and more direct conflict, and the course of this conflict determined the trend of the American labor movement for fifty or sixty years at the least.

In the beginning the trade-union movement was closely bound up with the socialist movement of the sixties and seventies. Intimately associated

with socialism were Adolph Strasser and Samuel Gompers, cigar makers, who were booked for a leading role in the American Federation of Labor, and P. J. McGuire, who was instrumental in founding the powerful carpenters' union and was for many years a prominent official in the Federation. Amidst the political and economic disorders of the seventies, Strasser turned to trade unionism as the only practical hope for improvement. He was elected president of the Cigar Makers' Union in 1877 while a great strike was going on in New York against the tenement-house system. The then president of the local union of cigar makers was a young man of twenty-seven, Samuel Gompers.

The tenement-house strike failed, and Strasser and Gompers realized that unionism in general and their union in particular must be reorganized. The system thereupon put into effect by the cigar makers was later adopted as a model by many other national unions.

Perhaps more significant than the particular form of organization was the philosophy which emerged from the trials of these two men. Their socialistic point of view gradually gave way to one of opportunism, in which the desire to improve the immediate condition of the wage earners by any means that offered was paramount. This attitude was the antithesis of the ideas then prevailing among labor leaders, who usually wanted to substitute coöperation for the wage system and sometimes even hoped to establish a socialistic state in place of the existing capitalistic one. Strasser and Gompers accepted the capitalistic system and strove to improve the laborer's position within that system.

The battlefield was ready and the battle lines were drawn for one of the most momentous struggles in American labor history. It was to be a struggle less of men than of philosophies. Should the American labor movement be idealistic? Was it to fight for the ultimate welfare of all laborers, skilled and unskilled, destitute and comfortable alike? Or was it to be practical, opportunistic, interested only in immediate benefits to the wage earners within the competitive group? This was the issue, and the next few years were to see it decided.

Business revived in 1879, bringing new vigor to the labor movement. Immediately city federations began to organize in large numbers. Certain of the national unions, notably the boilermakers, the carpenters, the plasterers, the metal workers, the tailors, the wood carvers, and the railroad brakemen, were organized. The Knights of Labor likewise flourished; but its membership was a fluctuating one. Increased business activity, higher prices, and lagging wages forced the Knights, in direct viola-

tion of its principles, to make concessions to a large section of its membership which was pressing for strikes. Many of the ensuing struggles were unsuccessful, owing largely to the fact that the organization operated chiefly among unskilled laborers who were inexperienced in the use of the strike method; but some succeeded, and these made good advertising material of which the Knights took full advantage. Particularly was this true of the threatened strike on the Wabash Railroad in 1885. A general strike order was issued which, had it been carried out, would have crippled Jay Gould's southwestern system. Gould would not take the risk, a settlement was reached, and the outcome was hailed as a great victory for the Knights. An exaggerated notion of the organization's importance became prevalent and its membership jumped from about 104,000 in 1885 to 702,000 in 1886.

This very success helped bring the Knights to grief, for it aroused greater expectations than could possibly be fulfilled. A call was issued for a nation-wide strike for the eight-hour day to begin on May 1, 1886. The trade unions took the initiative in this; but the Knights, despite opposition on the part of the general officers, were forced to participate. Owing to a number of causes, among them the explosion in Haymarket Square, Chicago, the strike was practically a failure. One by one the encounters in which the Knights participated came to an unhappy conclusion. The glowing anticipations of the large membership were being sadly disappointed, and after 1886 the Knights began to lose ground rapidly. By 1890 their membership had fallen to 100,000. Finally but a handful of reformers remained to carry on the work of the Noble Order of the Knights of Labor.

We turn back to the Knights' still embryonic rival. Several attempts had been made to organize the trade unions into a national federation but had failed, either because they were premature or because they omitted to take account of the economic forces then at work. The revival of 1879 led the labor men back to the idea of a national federation, and in 1881 the Federation of Organized Trades and Labor Unions of the United States and Canada was organized. In the beginning the purpose of this organization was primarily to obtain legislation. A legislative committee, of which Gompers was a member, stood at its head, but it soon became evident that in this field of endeavor the organization was a failure. It was the threat of the Knights of Labor that finally made the trade unionists realize their need for a really vigorous federation. The issue was brought to a head when after several skirmishes the Knights ordered all their members who were also members of the Cigar Makers' Union to sever the one connec-

tion or the other. Their aggressiveness proved to be their undoing, for in 1886 the trade unionists founded the American Federation of Labor.

The purpose of the A. F. of L. was purely economic. It avoided the mistake of emphasizing legislation at the expense of everything else. It was to be a federation not of the city centrals or of the state federations but of the national and international unions. It did not try to take unto itself all power, but allowed the sovereignty to remain with the individual craft unions—in striking contrast to the highly centralized organization of the Knights.

The organizers of the American Federation of Labor interpreted aright, as the leaders of the Knights had failed to do, the economic and individual forces at work at the time. Each laborer was anxious to better his economic lot but as yet he was not vitally interested in the welfare of his fellow-workmen. The skilled laborers could not work up much enthusiasm over a program calling for the "uplift" of the great mass of unskilled laborers. They were primarily selfish. If they seemed to develop a group spirit, this was merely an extension of the individual attitude and the spirit was still a selfish one. Assuredly the craftsman was interested in the welfare of his fellow-craftsmen—in so far as he could see that his own welfare was bound up with theirs.

The idealistic Knights had attempted to organize all the laborers together into one solid group but could not convince them of the advantages of such an organization. The Federation recognized how fundamental selfishness is in human nature and planned accordingly. Its leaders devised a scheme of organization which would make the individual laborers relinquish their power only to the extent that this was necessary to protect their own interest. The Federation was also based on the idea that the wage earners were primarily interested in working for immediate economic advantages—better wages, shorter hours, improved working conditions—rather than in striving for some remote workers' paradise. Some could be found among them who looked forward to abolition of the wage system at some time in the future and who wanted to work toward that end, but every last man of them desired more money and more leisure and better working conditions tomorrow, next week, and next year. The Knights had wished to substitute a producers' coöperative system for the wage system and to raise wages for the unskilled as well as the skilled. The Federation was organized on the basis that the craft was the most satisfactory unit, and that the interests of the workers were more closely



bound up with those of the other men in the same craft than with those of men in other crafts or of unskilled labor.

Many theories have been advanced to explain why the Knights declined so rapidly at the very time when the Federation was taking such great strides forward. Probably there were a number of causes contributing to its collapse, as for example its disastrous strike policy, but it seems likely that the fundamental reason lay in the inappropriateness of its structure and its philosophy. These postulated one or the other of two assumptions: either that the points of view and the interests of all wage earners are identical; or that, though having different interests, each is vitally concerned about the welfare of every other. The Federation was based on a contrary supposition, namely, that the interests of all laborers are by no means the same and that therefore they are primarily concerned with advancing their own individual welfare and only incidentally concerned, if at all, with furthering the welfare of other laborers. Craft autonomy won the day.

#### CRAFT UNIONISM IN CONTROL

Characteristic of this new period is the growth in numbers and influence of the national craft unions joined together in a relatively loose federation. Organized labor gained some of its greatest victories and reached its greatest heights under the leadership of Samuel Gompers, who guided its destinies during these years. Completely saturated with the underlying philosophy of the Federation, Gompers fought off all efforts to alter its course and maintained to the last an unswerving allegiance to these first principles. As the Federation grew and prospered, it bore living testimony to the soundness of his position, at least throughout most of the period during which he was at the helm. As his career was drawing to a close, some rather effective assaults were being made against his position and it began to seem less impregnable. Doubts began to arise as to whether the first principles had not served their purpose and might not be outliving their usefulness. We shall have more to say about this later. For the present it is enough to note that the question was being asked, and asked with some insistence, whether labor ought not to reorganize on a basis better adapted to changed industrial conditions and the new economic forces at work.

After its initial spurts the Federation gained quite slowly at first. This was due in part to the tremendous influx of members at the beginning and in part to the bad times of the nineties. Depressions are always

hard on organized labor. But the nineties, for all the hardship they brought, were to show that real progress had been made. Hitherto panics and depressions had practically destroyed the trade unions. Up to this point the history of organized labor had taken the form of cycles: organization, growth, the coming of a depression or a panic, and then the disintegration of the unions. This time the final phase of the cycle is missing. The unions lost members and did a little flirting with politics, but they did not disintegrate. On the whole, the movement kept its balance and continued steadfastly in the direction of fulfilling its economic purpose. The revival of business activity disclosed it, somewhat battered and torn it is true, but still there, organized, in good morale, and on its toes ready to pluck every advantage from brightening business conditions. For the first time in its history, organized labor had successfully withstood a severe siege, and in so doing it had established itself as a potent force in the economic life of the nation and had demonstrated the soundness of the principles on which it was founded. Any rival rising up in the future would have to face a redoubtable foe.

Trade unionism learned a number of valuable lessons during the nineties. It was an instructive decade. One of the strongest unions in all labor history was the Amalgamated Association of Iron and Steel Workers. To this union the powerful Carnegie Company had always been friendly until there acceded to its chairmanship Mr. H. C. Frick, a bitter opponent of organized labor. Immediately the company began to manifest a hostile attitude. There were disputes. The company announced a wage cut, the union rejected it, and a strike began on June 29, 1892. After much disorder and some violence and bloodshed, the union was beaten. Not only had it lost a strike; its power had been completely broken and unionism was practically driven out of the mills of western Pennsylvania. It appeared that even the strongest union had better think twice before trying to cope with the modern giant corporation which was fast gaining control over production.

The year 1894 afforded labor another slice of valuable but unpleasant experience. During the preceding year Eugene V. Debs had organized the American Railway Union along industrial lines, hoping to gather into its fold all the railway workers. Among those joining were the employees of the Pullman Palace Car Company. To settle a wage dispute affecting these employees the American Railway Union called a general strike on the railroads. The strike which was purely sympathetic so far as most of the workers were concerned spread rapidly. During the course of the strike Debs and other officials of the union were arrested and held in

contempt of court for disobeying an injunction which forbade them, among other things, to induce railway employees to strike by means of threats. Over the protest of Governor Altgeld of Illinois, President Cleveland sent United States troops to Chicago. The union was defeated, but two bitter lessons had been learned: one, that the general sympathetic strike was a dangerous expedient, particularly in view of the attitude the government was likely to take; and the other, that the employers possessed a formidable ally in the courts.

The period of the nineties is significant from still another angle. The Federation convention of 1893 submitted to the affiliated unions a political program which included a socialistic plank calling for the "collective ownership by the people of all means of production and distribution." Despite the opposition of Gompers and one or two others, a majority of the affiliated unions endorsed the program. The following year the trade unions participated actively in politics and practically all of the union candidates were defeated. At the next convention Gompers vigorously attacked the political program which had been adopted at the previous convention and succeeded in getting it repealed. In retaliation the socialists combined with the supporters of McBride of the miners and managed to elect him president instead of Gompers. Until the day of his death this one year of McBride's administration was the only period in the history of the Federation when Gompers was not in charge of its affairs.

Although the trade agreement had been used to some extent before this time, notably among the railroad unions, it was not until the nineties that it rose to a place of real significance in collective bargaining. A most important step was taken in the stove-foundry industry when in 1891 the trade agreement was put on a national basis. For a few years following 1897 the trade agreement was introduced very rapidly.

With the coming of prosperity in 1898 the labor movement took a sudden leap forward. Starting with less than 300,000 in 1898, membership had increased by 1904 to 1,676,000. After a slight setback in the year 1905 it remained practically stationary until 1910. Gains during the next three years brought the total to about two millions.

During this period the Federation made no serious attempt to organize the unskilled workers, its activities being mainly limited to the skilled. From the unskilled and the semi-skilled it culled chiefly the upper strata of the semi-skilled. With the exception of the miners and clothing workers very few representatives of the foreign-speaking unskilled and semi-skilled classes found their way into its ranks.

Though the Federation prospered with respect to numbers, its tactics during this period were largely defensive. Two great threats were hampering the unions in their struggle for economic betterment—the threat of organized employers and the threat of a hostile court. Two employers' associations, the National Founders' Association and the National Metal Trades' Association, formerly friendly to the unions, severed relations and inaugurated an active anti-union fight. Local employers' associations sprang up throughout the country. The American Anti-Boycott Association was organized in 1902 and led the attack against the unions in the famous Danbury Hatters' case. Among the most powerful employers' organizations was the National Association of Manufacturers, organized in 1895. This body began about 1903 to wage an active fight against trade unionism, particularly in the political field, where it played no small part in balking favorable legislation and preventing favorable court decisions. In the organized fields the wage earners probably held their own, though the organized opposition of the employers undoubtedly served to check union growth. In some industries, the steel industry for example, practically no progress was made.

Possibly more important even than the opposition of the employers was the somewhat antagonistic or at best indifferent attitude of the government as revealed in adverse decisions of the courts. The Federation, mindful of the experience of the Knights and other organizations as well as of its own failures, had adopted a general policy of staying out of politics. But recent events had partially broken down its resolution. The court's use of the injunction in the Debs case had disclosed the possibilities of that instrument as an anti-union weapon. In 1908 the United States Supreme court decreed in the Danbury Hatters' case that members of a labor union could be held financially responsible to the full amount of their individual property, under the Sherman Act, for losses to business occasioned by an interstate boycott. The following year, in the Bucks Stove and Range case, Gompers, Mitchell, and Morrison, three of the most prominent members of the Federation, were sentenced by a lower court to terms of imprisonment for violating an injunction prohibiting all mention of the fact that the plaintiff was being boycotted. The penalties were later removed on a technicality by the U. S. Supreme Court. It began to look as if the Federation would be forced to take an active part in politics by a government which would not let it alone, as if from this time on the Federation would have to wage a continuous fight to free itself from what it calls the domination of the courts,

The history of trade unionism between this period and the beginning of the depression of the thirties is crowded with interesting and significant events which press for attention but must be passed over hastily. Trade unionism reached the First World War in a good state of health. It was passing through a business depression, but was now able to look upon bad times as a condition calling for adjustment rather than a terrifying calamity. To offset the ill effects of the depression there was in control of the government at Washington, for the first time in years, an administration somewhat favorable to labor. The Clayton Act, passed in 1914, exempted labor from the anti-trust acts and, although it did not compass all of labor's demands, was considered to be the most satisfactory piece of legislation obtained in a long time. That court decisions would subsequently render it practically worthless was not foreseen and in no way detracted from its significance at the time. In the Clayton Act labor had scored a great political victory. The strength of organized labor at this time is further indicated by the success of the joint demand of the four railroad brotherhoods for the eight-hour day. Congress passed the act (the Adamson Act), the employers accepted the terms in an agreement, and the U. S. Supreme Court declared it constitutional.

The war saw organized labor reach the peak of its power. Between 1915 and 1920 the membership of the unions belonging to the American Federation of Labor practically doubled, numbering more than four million in 1920. In formulating a code of rules to govern the relations of capital and labor the Taft-Walsh War Labor Board included the right of labor to organize, the basic eight-hour day, and the living wage; and most important to labor, it left the right to strike unmolested. Labor received a further recognition when Samuel Gompers was appointed one of seven members of the Advisory Commission of the National Council of Defense. The Federation was also granted representation upon a number of other boards.

With the coming of peace, labor lost some of the advantages it had gained during the war. In 1919 twenty-four allied unions called a strike in the steel mills. The issue was definitely that of union recognition. The government either would not or could not help the situation. Labor found itself arrayed against one of the strongest combinations of capital and capitalists in the world, and labor was badly beaten. Then came the bituminous coal strike which revealed even more clearly how much conditions had changed since the war. The miners went out on a strike following a wage dispute. In the course of the strike, on the advice of Attorney General

Palmer, Judge Anderson of Indianapolis issued an injunction forbidding the union officials to proceed. The strike was finally settled by the Bituminous Coal Commission's granting to the miners a 27 per cent increase in wages; but this did not mitigate the menace which became apparent when a "friendly" administration saw fit to smite labor with one of the employer's most fearsome weapons.

Labor's path was strewn with difficulties. Employers were trying to cut wages that had risen during war time. The unions were resisting and strikes were being declared. Then came the depression of 1920, bringing to labor the customary reverses. Inch by inch much of the ground that had been gained during the war was lost. The injunction was being used with greater and greater frequency. Unfavorable decisions were being handed down by the courts. Among them were some, particularly the Duplex Printing case decision, which raised serious doubts as to whether the Clayton Act, once hailed as the Magna Carta of American labor, had really altered the status of trade unions in this country. Organized labor was again on the defensive and organized labor remained on the defensive for a number of years thereafter despite the return of prosperity on a scale hitherto unknown. Trade-union membership remained practically at a standstill from 1923 to 1929. Many explanations are offered for this stagnation; increased wages, inefficient leadership, the "antagonism" of the courts, the employers' "welfare offensive," craft unionism, and others. Whatever the explanation the trade unions had all they could do to hold their own during this period of unprecedented prosperity. Then came perhaps the severest depression in our history to deal them further deadly blows.

#### THE DEVELOPMENT OF INDUSTRIAL UNIONISM

The period of labor history that started with the advent of the Democratic administration in 1933 is marked by a new lease on life for trade unionism in general, and by the development of industrial unionism through the Congress of Industrial Organizations. The enactment of the National Industrial Recovery Act including Section 7A, which guaranteed labor the right of collective bargaining, was a powerful stimulant to organized labor. When this law was invalidated by the Supreme Court, Congress repassed the labor section in more detailed form in the National Labor Relations Act, popularly called the Wagner Act after its senatorial sponsor. The details of this law, as well as of the Fair Labor Standards Act and other New Deal legislation, will be discussed in a later chapter.

With the right to organize and bargain collectively guaranteed and protected by law, the opportunity was open for unionizing the previous citadels of the open shop—namely, the large-scale industries like automotive, steel, rubber, and others. The unions affiliated with the A. F. of L. were ill prepared for this new opportunity. Traditionally the A. F. of L. stood for voluntary organization, that is, organization of workers who themselves showed some interest in becoming union members. Organizing the unorganized masses of unskilled and semiskilled workers in the nation's mass production industries required a more vigorous approach than that found in the Federation.

It was the basic structure of the Federation, however, that provided the biggest handicap to organization among the mass production workers. New members were attached to what are called federal unions. From time to time, whether these members wished or not, they were separated from their federal union and assigned to the old line craft union most nearly appropriate. Thus, in the organizing campaigns, carpenters, masons, machinists, plumbers, and other craftsmen working for a rubber company became part of the same federal union of which the more specialized rubber workers were members. From time to time, however, craftsmen were pulled out of the federal union, leaving the specialized and unskilled groups to shift for themselves. There were many complaints about this practice from the workers involved, but the Federation maintained established lines of jurisdiction which made any other action seem impossible.

The revolt against these practices was not limited to the workers themselves. Industrial unions within the Federation, particularly the mine and clothing workers, were anxious to take full advantage of the organizational impetus by creating new unions on an industrial basis.<sup>4</sup> At the 1934 San Francisco convention of the Federation, John L. Lewis, president of the United Mine Workers Union, emerged as the leader of the industrial union bloc, supported by the industrial unions and the federal unions. Numerous resolutions were introduced urging the Federation, in the light of its apparent failure, to organize the mass production industries, to surrender its traditional craft union basis. The compromise resolution which finally passed directed the Executive Council of the A. F. of L. to grant industrial union charters in certain mass production industries, but left the craft-dominated council with the task of directing the organization of the workers in those industries.

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<sup>4</sup> See Chapter VI for a more detailed discussion of industrial unionism,

The industrial union group hailed this action as a victory for their philosophy, but between the 1934 and the 1935 conventions very little was accomplished toward establishing new industrial unions. Despite an active rank and file movement the Executive Committee decided that the time was not opportune for organizing the steel industry, and when, after nine months, charters were finally granted in the automotive and rubber industries, these were found not to be industrial union charters after all.

By the 1935 convention, industrial union leaders were convinced that nothing could be accomplished unless they could muster enough votes in the convention to change the policy of the A. F. of L. Therefore, when after intense and bitter debates the industrial union bloc received only a third of the convention votes, its leaders withdrew to form on November 10, 1935, the Committee for Industrial Organization. John L. Lewis was elected chairman of this new organization of eight industrial and semi-industrial unions representing over a million workers, or about a third of the A. F. of L. membership. The purpose of the Committee was "to encourage and promote organization of the workers in the mass production and unorganized industries of the nation and affiliation with the American Federation of Labor."

Thus, during this formative period, the C.I.O. professed to be merely a committee of its parent organization. In 1938, however, the break became complete and the new Congress of Industrial Organizations became an autonomous federation of industrial organizations.

The new organization has had a great influence upon the development of the American labor movement. Outlawed by the Federation of Labor as a dual organization, it has nevertheless been very successful in its self-appointed task of organizing the hitherto unorganized. When we consider that steel, rubber, aluminum, oil, and automobiles, which in 1935 had little if any organization, are now well-organized industries, we can see what the C.I.O. has meant to American labor. Labor's civil war has, to be sure, brought many problems to employers and to the public which often find themselves innocent bystanders in bitter jurisdictional disputes. These same disputes, however, have brought a competition to organize that has resulted, for example, in the unionization of large segments of the southern textile and furniture industries, previously hardly touched by unions. As we shall see in a later chapter, the C.I.O. has taken a more active part in political activity than has the A. F. of L. It must be said that the vigor with which the new organization has entered into the task of expanding the labor movement in the United States has been one of the outstanding events in American labor history.



The outbreak of the Second World War brought new opportunities for organizing as millions of new workers flocked into the war industries. Both of the national federations took full advantage of this chance, and, as is mentioned later in this chapter, membership soared. Labor gave up its right to strike during the war and, in return, the government established the National War Labor Board which adopted collective bargaining with union security through the requirement of maintenance of union membership as one of its guiding principles.

Organized labor today appears to be facing the future with full confidence of gains both in membership and in power. The return of John L. Lewis and the United Mine Workers to the American Federation of Labor has, to be sure, raised many questions regarding the future of the C.I.O. Until some change, however, has been made in the basic philosophy of the craft conscious executive committee of the Federation, there appears to be little place in that organization for the large industrial unions. We shall, therefore, probably continue to have civil war in the ranks of labor as the advocates of craft unionism and industrial unionism seek to extend their membership.

#### NUMERICAL STRENGTH OF UNIONISM

An important aspect of the development of organized labor is its growth in numbers, and numbers are not merely important as a measuring rod by which to gauge the progress of organized labor. Oftentimes in adopting certain policies the organized sections of the laboring class assume to speak for labor in general. It is clear, therefore, that not only the growth in total numbers is significant, but also the number of organized workers relative to the number of organizable workers, and the extent to which the different kinds of workers are organized.

Great difficulty has been experienced in obtaining the information necessary to furnish these data. Both the A. F. of L. and the Congress of Industrial Organizations issue each year figures representing the total number enrolled in their affiliated unions, but these figures cannot be accepted as wholly reliable. They are based upon other figures which are probably to some extent inaccurate. There is no uniform policy among the affiliated unions of either organization as to the counting of men who have not paid their dues. Some unions carry them for a considerable period while others soon drop them. To a certain extent the unions are probably influenced by the immediate desirability or undesirability of having a large enrollment. Voting strength in both the A. F. of L. and

the C. I. O. is based upon membership, but so also is the per capita assessment. In certain circumstances, as when engaged in a dual-union controversy, a union is apt to pad its rolls. Sometimes it simply refuses to reveal its membership, as did the Maintenance of Way Employees in 1920, 1921, and 1922.

When the figures furnished by the A. F. of L. and the C. I. O. are added to the figures supplied by the unaffiliated unions, the probability of error is greatly increased. Particularly is this true if the radical unions are included, because of their well-known tendency to see double. Nevertheless even such figures as are obtainable do have a real value despite their admitted inaccuracy. They are especially useful in comparing one period with another since the same errors are apt to obtain straight through the various periods.

A comprehensive study of the numerical strength of organized labor was made by Dr. Leo Wolman, a member of the staff of the National Bureau of Economic Research. Much of the data presented here are drawn from Dr. Wolman's study, and the remainder of the figures are from the reports of the Bureau of Labor Statistics, which keeps a careful check on these matters. Only total figures for union membership are presented in the following table.<sup>5,6</sup>

MEMBERSHIP IN AMERICAN LABOR UNIONS<sup>5,6</sup>  
1897-1944

Year	Average Annual Membership	Year	Average Annual Membership
1897 .....	447,000	1910 .....	2,140,500
1898 .....	500,700	1911 .....	2,343,400
1899 .....	611,000	1912 .....	2,452,400
1900 .....	868,500	1913 .....	2,716,300
1901 .....	1,124,700	1914 .....	2,687,100
1902 .....	1,375,900	1915 .....	2,582,600
1903 .....	1,913,900	1916 .....	2,772,700
1904 .....	2,072,700	1917 .....	3,061,400
1905 .....	2,022,300	1918 .....	3,467,300
1906 .....	1,907,300	1919 .....	4,125,200
1907 .....	2,080,400	1920 .....	5,047,800
1908 .....	2,130,600	1921 .....	4,781,300
1909 .....	2,005,600	1922 .....	4,027,400

<sup>5</sup> Leo Wolman, *Ebb and Flow in Trade Unionism* (National Bureau of Economic Research, 1936), p. 16.

<sup>6</sup> Florence Peterson, *American Labor Unions, 1935-1944* (Harpers, 1945), p. 56.

MEMBERSHIP IN AMERICAN LABOR UNIONS—*Continued*  
1897-1944

Year	Average Annual Membership	Year	Average Annual Membership
1923 .....	3,622,000	1934 .....	3,608,600
1924 .....	3,536,100	1935 .....	3,890,000
1925 .....	3,519,400	1936 .....	4,700,000
1926 .....	3,502,400	1937 .....	7,400,000
1927 .....	3,546,500	1938 .....	8,000,000
1928 .....	3,479,800	1939 .....	8,200,000
1929 .....	3,442,600	1940 .....	8,500,000
1930 .....	3,392,800	1941 .....	10,500,000
1931 .....	3,358,100	1942 .....	12,000,000
1932 .....	3,144,300	1943 .....	13,500,000
1933 .....	2,973,000	1944 .....	13,750,000

An examination of the membership data shows several interesting facts. On two occasions, in 1887 when the membership was about 1,000,000 and in 1920 when it was over 5,000,000, a strikingly large total has been followed by a steep decline. In the first case dissensions within the labor movement, the struggle between the Knights and the Federation, and the long depression of the nineties all took their toll. Undoubtedly some of the expansion in membership between 1917 and 1920 was due to abnormal conditions brought on by the First World War, from which there was bound to be a reaction. Add to this the depression of 1920-1921 and much of the decline is accounted for. Moreover, even in 1923 labor was in a much stronger position than during the years just preceding the war, having approximately a million more members. From 1923 to 1933 the reported membership declined, probably because of the strong anti-union movement on the part of employers and the rapid development of the company dominated unions. The expansion in union membership between 1934 and 1944 has been remarkable and represents the largest growth of the whole history of the American trade-union movement.

The relatively great gains made in the years before the First World War are largely accreditable to the craft unions in the building trades and on the steam railroads. The rather rapid development of the United Mine Workers Union was also a factor. About half the total membership in the entire period before the First World War was to be found in the building and transportation industries, the rest of it being scattered over a large number of occupations. During the war period the situation

changed in a striking manner. Unionism spread rapidly among the semi-skilled and the unskilled. Organization in the textile industry and in packing and slaughter houses grew tremendously. The growth of the seamen's and the longshoremen's unions placed water transportation among the highly organized occupations. The metal unions increased fourfold. In steam transportation, unions that had been very weak before the war showed the greatest relative increase among transportation unions. The clothing industry also experienced a very rapid development of organization.

The unions that had gained the most members during the war were chiefly the ones to lose the most when the great decline set in following the war and during the business depression of 1920-1921. All the unions lost; but those which had been most highly organized before the war, particularly the skilled crafts on the railroads and in the building industry and the United Mine Workers, were the ones to retain the greatest share of their strength. During the prosperity period the United Mine Workers lost ground rapidly, owing to internal dissensions and to the chaotic conditions existing in the bituminous part of the industry. About 60 per cent of the loss from 1920 to 1923 was contributed by the metal and transportation unions. The textile and packing-house unions went back to about their former status. Only in one industry, the clothing industry, were the gains made during the war retained to any degree. Unionism in that industry was on a higher level than it had been before the beginning of the First World War owing largely to the amazingly rapid growth of the Amalgamated Clothing Workers Union.

The growth of trade unionism since 1933 can be attributed to several developments. The passage of the National Industrial Recovery Act with its famous Section 7A made it possible for the unions to organize in the fields where previously union organizers had been kept out, sometimes by force. Such organizations as the United Mine Workers took full advantage of this opportunity and went into the previously unorganized coal fields of Kentucky and West Virginia. The National Labor Relations Act<sup>7</sup> passed in 1935 was another federal law which protected collective bargaining. Armed with the protection of that law, trade unions went into many other unorganized fields, and greatly increased the number of union members. The appearance of the C. I. O. in 1935 not only increased the membership of the labor movement by the new members which the C. I. O. gained in the steel, automobile, rubber, electrical, aluminum, and other industries, but it stimulated the A. F. of L. to extend its organizing campaign. Thus, in 1938, when the C. I. O. held

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<sup>7</sup> See Chapter XV for further discussion of this law.

its first convention, the A. F. of L. was able to report a membership of more than 3,500,000 as compared with the C. I. O. report of approximately 4,000,000 members. The C. I. O. figures probably over-estimate somewhat the strength of the industrial union, since the membership is apt to be less permanent. By the end of 1941 the A. F. of L. reported a membership of 4,800,000; the C. I. O. claimed 5,000,000 members, and the independent union members numbered approximately 800,000. In the early part of 1944, the A. F. of L. claimed a total of approximately 6,500,000 dues-paying members; the C. I. O. claimed 5,300,000 dues-paying members at their convention in November, 1943, and unaffiliated unions claimed membership of approximately 1,500,000 workers. Thus union membership is at a new high with approximately 13,300,000 wage workers and clerical workers affiliated.

Even more significant than the total number of organized workers and their distribution among the various industries is the ratio of actual membership to potential membership. In his study of the growth of trade unions Dr. Wolman deals in a comprehensive way with this aspect of his subject. He calls attention to the many questions that arise in connection with determining the total number of organizable workers, such as whether or not to include agricultural workers and whether or not to take account of trade-union restrictions on membership in the nature of age requirements, standards of skill, initiation fees, and so forth. He states, "No attempt is, however, here made to deal with such refinements; and comparison is always made between the numbers in trade unions and the number of those employees, who are, by common consent, regarded as likely material for organization in trade unions."<sup>8</sup> This practically amounts to excluding salaried and employer classes and agricultural employees. Dr. Wolman concludes that in 1910 there were 9.9 per cent of the estimated number of wage earners actually organized; in 1920, 19.4 per cent; and in 1930, only 10.2 per cent of wage earners actually organized. These rough figures, however, present a misleading picture of the extent of organization because of the concentration in a few industries and trades. If the extent of organization is broken down into industrial divisions, there were, in 1930, 22.4 per cent organized in mining, quarrying, crude petroleum and gas production, 12.2 per cent in manufacturing and mechanical industries, 22.1 per cent in transportation and

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<sup>8</sup> Leo Wolman, *The Growth of American Trade Unions, 1880-1923* (National Bureau of Economic Research, 1924), p. 82; and *Ebb and Flow in Trade Unionism* (National Bureau of Economic Research, 1936), Ch. VIII. (Figures here are from the latter work.)

communication, but only 3.2 in service industries. Wolman's study of the extent of union organization leads him to comment: "Throughout all but a few industries union members are organized in craft unions whose jurisdiction cut across industrial demarcations. In the industries in which this form of organization prevails, the highly skilled craftsmen are as a rule well organized, the semiskilled much less so, and the unskilled hardly at all."<sup>9</sup>

The correlation which existed up to 1935, at least between organization and skill is illustrated by the extent of trade-union organization among selected occupations, presented by Wolman. Thus, in 1930 the following occupations were organized well above the national average: barbers, brick and stone masons and tile layers; carpenters and joiners; compositors, linotypers and typesetters; electrical workers; electrotypers and stereotypers; lithographers; locomotive engineers and firemen; longshoremen and stevedores; mail carriers; metal polishers and buffers; molders, founders and casters; painters, decorators and paperhangers, pattern and model makers; plasterers and cement finishers; plumbers and gas and steam fitters; pressmen and plate printers; railway conductors; and upholsterers.<sup>10</sup>

That there has been a rapid increase in the proportion of wage earners under union agreements in various industries is shown by the data, for January, 1945, given in the table on page 136:

The C. I. O. challenges the traditional A. F. of L. belief that specialized and unskilled workers cannot be organized into a permanent union. Thus the C. I. O.'s strongholds lie in mass production industries among specialized and unskilled workers, although it attempts to include the skilled workers in an industry as well. Indeed, the C.I.O. has invaded such A. F. of L. strongholds as the building industries and government employees in the hope that a more progressive union might win even skilled workers from conservative and sometimes racketeering A. F. of L. unions. While the permanency of the C.I.O. has not been tested through the worst depressions, as was the A. F. of L., nevertheless the recession of 1938 did not do undue damage to the industrial unions of less skilled workers. On the other hand, however, the C.I.O.'s ambitions to include the millions of workers unreached by the A. F. of L. have not been justified, since the C.I.O.'s strength is still restricted to a relatively small number of industries.

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<sup>9</sup> *Ibid.*, p. 119.

<sup>10</sup> *Ibid.*, p. 121.

PROPORTION OF WAGE EARNERS UNDER UNION AGREEMENTS IN JANUARY, 1945  
MANUFACTURING INDUSTRIES<sup>11</sup>

80-100 Per Cent	60-80 Per Cent	40-60 Per Cent	20-40 Per Cent	1-20 Per Cent
Agricultural equipment Aircraft and parts Aluminum Automobiles and parts Breweries Carpets and rugs, wool Cement Clothing, men's Clothing, women's Furs and fur garments Glass and glassware Meat packing Newspaper printing and publishing Nonferrous metals and products Rubber products Shipbuilding Steel, basic Sugar, beet and cane	Book and job printing and publishing Clocks and watches Coal products Electrical machinery, equipment and appliances Leather tanning Machinery and machine tools Millinery and hats Paper and pulp Petroleum refining Railroad equipment Rayon yarn Tobacco products Woolen and worsted textiles	Baking Canning and preserving foods Dyeing and finishing textiles Flour and other grain products Furniture Gloves, leather and cloth Hosiery Jewelry and silverware Knit goods Leather luggage, handbags, novelties Lumber Pottery, including chinaware Shoes, cut stock and findings Steel products Stone and clay products	Beverages, non-alcoholic Chemicals, excluding rayon yarn Confectionery products Cotton textiles Paper products Silk and rayon textiles	Dairy products

<sup>11</sup> *Monthly Labor Review*, 60:816 (April, 1945).

## CHAPTER VI

### STRUCTURE AND GOVERNMENT

#### CLASSIFICATION OF LABOR ORGANIZATIONS

THE importance of the form of organization in the development of organized labor has already emerged to some degree from the story of that development in the United States. An organization of any kind whatsoever, trade union or other, must adapt itself to the particular environment in which it hopes to flourish. Trade-union leaders have learned by sad experience that they cannot draw up a plan of organization on a blue print and expect it to meet any and all situations. The form must be malleable, compliant to changing circumstances. This is true of all organizations, but particularly so of trade unions because the industrial environment changes so frequently. Once solved, the problem of structure does not stay solved. Overnight conditions are altered and it bobs up again in all its pristine complexity. At no previous period in the world's history have industrial changes come with such suddenness and in such swift succession as they are coming now in the United States. Never have they been so fundamental and so far-reaching.

It is no wonder that labor organization has been the victim of unstable and ill-adapted forms. What is the best form of organization? Who can say, when economic conditions are changing so fast? Even at a given time there is probably no one form which can be said to be the best fitted to the needs of all the laborers. The complex and diverse relationships which the wage earners in different crafts and industries bear to their employers require different kinds of structures to body them forth. Perhaps the best answer possible has been made by the Webbs: "The most efficient form of Trade Union Organization is therefore one in which the several sections can be united for the purposes that they have in common, to the extent to which identity of interest prevails, and no further, whilst at the same time each section preserves complete autonomy wherever its interests or purposes diverge from those of its allies." They go on to say, "The solution has been found in a series of widening and cross-cutting federations, each of which combines, to the extent only of its own particular objects those organizations which are conscious of their identity of purpose. Instead of a



simple form of democratic organization we get, therefore, one of extreme complexity. Where the difficulties of the problem have been rightly apprehended, and the whole industry has been organized on what may be called a single plane, the result may be, as in the case of the Cotton Operatives, a complex but harmoniously working democratic machine of remarkable efficiency and stability. Where, on the other hand, the industry has been organized on incompatible bases, as among the Engineers, we find a complicated tangle of relationships producing rivalry and antagonism, in which effective common action, even for such purposes as are common to all sections, becomes almost impossible.”<sup>1</sup>

It appears, therefore, that no hard and fast classification of trade-union forms can be made. Combinations of types have always been more common than pure types. Those tendencies which stand out must be regarded merely as tendencies and not as representing anything pure or absolute, whether as to period or as to particular unions.

There is the type of union that proposes to unite all workers, regardless of craft or industrial divisions, into groups on the basis of localities and districts, and throughout the largest possible international area. This form of organization presupposes a well-developed class consciousness on the part of labor. There are at least two classes, the employer class and the employee class, whose interests are to a certain extent opposed. Either it is felt that the interests of all the members of the employee class are one; or else that all the individual wage earners, realizing that they belong to the same class, and that that class is on the whole the least fortunate, are interested enough in each other's welfare to make real sacrifices for the good of all. One or the other of these suppositions must lie at the root of the “solidarity of labor” type of union.

The craft union, in sharp contrast with the above type, is an organization of laborers engaged in a single occupation. According to Professor Hoxie, “The strict test of a craft union seems to be that each member of the organization performs or may perform all the tasks included in the occupation. Usually a craft union covers but a fraction of the work of a given industry.”<sup>2</sup> It assumes that, although the laborers of different crafts may have some interests in common, they have not enough to warrant their making sacrifices for each other. It holds, on the other hand, that the interests of the members of a single craft are sufficiently shared to warrant an individual member's surrendering to the group a considerable part of the control over his own economic destiny.

<sup>1</sup> Sidney and Beatrice Webb, *Industrial Democracy* (Longmans, 1920), p. 139.

<sup>2</sup> R. F. Hoxie, *Trade Unionism in the United States* (Appleton, 1923), p. 38.

The industrial union includes all who work in a given industry, skilled and unskilled, and regardless of differences in craft. Its members are all engaged in turning out a certain finished product or series of closely related products. For example, this type of union would gather into one organization all the workers engaged in turning out coal; the coal cutters, the laborers, the electricians, the teamsters, the carpenters, the engineers, and others. The assumption is that all the wage earners in a given industry, such as the coal industry, have common interests. Those interests, it is felt, are more completely shared than are the interests of fellow craftsmen working in different industries. There may also be a streak of idealism present. The skilled worker may indeed have sincerely at heart the welfare of the unskilled laborer. It is probable, however, that when the skilled worker joins forces with the unskilled or the semiskilled, he is more frequently actuated by fear of the latter's competition or a desire to threaten the employer with a united front in the industry than by benevolent impulses. In other words, to put the case bluntly, his motive is apt to be a selfish one.

A fourth type of "unionism," which is really not unionism at all, is what Hoxie has aptly called predatory unionism. Predatory unions are not concerned with the legitimate purpose of collective bargaining, but rather with the well-being of racketeers or gangsters who control the union and use it only as a tool for carrying out their crooked activities. Unfortunately, the building industry in particular has been the victim of rackets, and all too many building trades unions have become tools of racketeers. While the A. F. of L. itself is opposed to these unions and to racketeering, it is unwilling to interfere with the internal affairs of its member unions, over which, as we shall see, the Federation deliberately surrenders control by its policy of member autonomy and voluntarism.

A union may be used as a racketeering union in many ways. Perhaps the simplest form occurs when gangsters, unknown to the rank and file members as such, get themselves elected as officers of the union and extract from the dues of the members handsome salaries and "bonuses."

If the union controls the job opportunities, it may charge excessively high dues, or even collect fees or a percentage of wages, in return for permitting its members to take jobs. When racketeers in an industry gain control of a union, the threat of strike by the union is used to extort money from business men or builders. Thus, in several of the large cities, builders, to be free from strikes, have had to pay the racketeers a certain percentage of the cost of building. If the builder refused, he found himself unable to build. If he persisted, despite strikes and threats, violence

and bombings were callously used to make it "worthwhile" to buy "protection" or "strike insurance." Sometimes the racket has taken the form of threatening to strike unless the builder used certain building materials, to be purchased at excessively high prices.

Many other examples of types of rackets or predatory unions might be presented, but the general pattern is similar. Several good studies of racketeering unionism have been published recently, to which the reader may turn for further details,<sup>3</sup> but we need not concern ourselves with these details, since predatory unionism belongs more properly in a study of rackets than in a study of labor organizations. It is indeed unfortunate that some unions have fallen prey to racketeers and gangsters, and these "unions" receive more than their share of publicity, yet predatory unionism is by no means typical of the labor movement. Strong agitation has been carried on in recent years within the A. F. of L. to rid the federation of the taint of these racketeering unions, for such unions are used as examples by those who have an innate dislike of labor organization or who object to collective bargaining. Such writers try to persuade the public that these racketeering unions are characteristic of labor unions.

There are, then, three legitimate types of labor organization: the general labor union, the craft union, and the industrial union, which we shall consider throughout this chapter. We need not here consider any further the fourth, and illegitimate, type, predatory unionism. Probably none of these types will often be found in a pure state, but the various combinations are built around them. One of these is the amalgamation. This is a combination of two or more crafts, such as the Amalgamated Association of Iron, Tin, and Steel Workers of North America. Difficulty is found in classifying a union that extends its jurisdiction to include workers who cannot perform all the tasks belonging to the occupation. The carpenters' union affords a good example of this. Is it a craft union? Strictly speaking, no. Yet it should be remarked that the reasoning of the carpenters as manifested in the form of organization which they have developed is precisely the reasoning of those who uphold the craft union. These latter advocate the craft union because they believe it to be the type of organization which will most effectively eliminate competition. The carpenters' union on its part has sought to include those and only those who compete against each other or who in the future might do so—"the carpenter of today may be the millman of tomorrow." In other words it has been carrying out the craft idea.

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<sup>3</sup> Harold Seidman, *Labor Cears* (Liveright, 1938), and Edward D. Sullivan, *This Labor Union Racket* (Hillman-Curl, 1936).

Throughout the history of American labor these three primary forms of organization have been battling for supremacy. At times they have become entangled to such a degree that it has been impossible even to determine which was dominant. Usually, however, one of the three ideas has clearly been in the ascendancy and has forced reluctant concessions from its rivals.

### THE GENERAL LABOR UNION

The general labor union has been the least successful of all the forms of labor organization. In its pure condition it has played no significant part in American trade-union history. Its fundamental weakness is that it is not content to organize the various groups "for the purposes that they have in common, to the extent to which identity of interest prevails—and no further, whilst at the same time each section preserves complete autonomy wherever its interests or purposes diverge from those of its allies." Apparently man has not as yet developed to the point where he will make substantial sacrifices for the benefit of his fellows. In times of crisis men will often rise to great sacrificial heights. A war, an earthquake, a famine, or even a spectacular strike such as the coal-miners' strike of 1902 may make them, for the time being, obvious to their own interests in their great concern for the welfare of others. But this does not last. They cannot stand the rarefied atmosphere of the heights. The history of organized labor in this and other countries is replete with examples of the failure of what Professor Hoxie calls "uplift unionism." Success has attended the efforts only of those organizers who have recognized the great potency of self-interest and have shaped their enterprises accordingly.

The general labor union is not, of course, necessarily based upon altruism. It may be based upon the idea that the interests of all laborers are common, or at least sufficiently so to warrant their uniting their efforts in a fight against the employers. If labor is in truth class-conscious, then a uniting of all the laborers under one flag is the logical form for organization to take. This would imply that there are essentially two groups in the industrial order, the employer group and the employee group, whose interests are quite definitely opposed. The labor union, if based upon this idea, seems to stand on a somewhat shaky foundation. Undoubtedly all laborers do have some interests in common. So do all the members of any society, but up to the present time the interests of the skilled laborers and those of the unskilled have not become enough alike to justify their uniting in a joint effort to improve their condition. The skilled worker has found that he

can improve his condition most successfully by limiting his organized efforts to those of his own craft or at most to those in similar crafts or in the same industry.

In the United States, the one example of an attempt to organize a general labor union in the grand style is found in the Knights of Labor. The story of the Knight's spectacular rise and fall has already been related. We have seen that its decline was in a great measure due to fundamental weaknesses in the type of structure which it exemplified.

Another attempt was that of the One Big Union. This organization sprang up in western Canada early in 1919, largely as the result of long-continued discontent with the policies of the Trades and Labour Congress of the Dominion on the part of the western labor bodies. By the end of that year 8 central labor councils, 2 district boards, and 101 local units, with a reported membership of 41,150, were affiliated with the One Big Union.<sup>4</sup> The following year a branch organization was established in the United States. There seem to be no reliable data regarding the number enrolled, but the membership (claimed to be 40,000) consisted chiefly of machinists and roundhouse men. A spectacular strike in Winnipeg in the spring of 1919 gave the movement a good deal of publicity. Opposition arose on all sides. In 1920 the delegates from the Lumber Workers' Industrial Union insisted that they be seated and allowed to vote as a group representing the lumber workers, not as representing different territorial divisions. Upon being refused, this union, numbering about 20,000, withdrew from the O.B.U. This was a staggering blow. The Canadian government attacked the O.B.U. as an offshoot of Soviet Russia, and the trade unions affiliated with the Canadian Trades and Labour Congress and the A. F. of L., particularly the United Mine Workers, fought it vigorously. Decline was inevitable; and though it is hard to get at the truth with the One Big Union claiming large numbers and the opposing groups crying out that it was a complete failure, still it is not a potent force today. According to figures compiled by the Research Department of Rand School the total Canadian union membership in 1933 was about 320,000 and of this number the O.B.U. claimed 22,890.

The fault undoubtedly lay in large measure with its structure, though its radical philosophy was also to blame. As a matter of fact, it is not easy to separate the two. By its very nature, an organization of the labor-union type must call for rather fundamental changes in society. These changes need not necessarily be sought immediately by revolution; but if it is con-

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<sup>4</sup> Department of Labour, Canada, *Tenth Annual Report on Labour Organization in Canada* (1921) p. 23.

tended that there are two classes, the employer and the employee, whose interests are fundamentally opposed, and if the interests of the laboring class are held to be common, then the demand for a basic change in the wage system must follow as the night the day. This was true of the Knights of Labor, who advocated the substitution of a producers' cooperative system for the existing wage system. It was also true of the One Big Union, a main objective of which was "to prepare themselves for the day when production for profit shall be replaced by production for use." The O.B.U., however, was by no means a militant organization. Though favoring the use of the general strike, it condemned sabotage and the use of violence and expected the great change in the social order to be brought about by economic development rather than by revolution.

### THE CRAFT UNION

We have observed that the first effective trade-union organizations in the United States were the local craft unions. Then came the crafts or trades unions, i.e., federations of the local craft unions. Several attempts to organize national federations of these trade unions, or city centrals, as they were sometimes called, failed. So did many attempts to organize national craft unions, partly because the trade union was not as yet strong enough to weather panics and depressions and partly because the area of competition had not yet become wide enough to warrant organization on a national scale. In the middle of the century and shortly thereafter the local unions in a large number of crafts successfully organized national and international craft unions.

It must not be inferred that the craft union was the only sort of labor organization to prosper. The brewers' union, of the industrial type, was successfully organized in 1886; and the United Mine Workers, another industrial union, in 1890. Nevertheless, the craft union was the dominantly successful form. Its great test as a form of labor organization came when the Knights of Labor crossed swords with the American Federation of Labor, which stood for the craft-union idea, in the latter part of the nineteenth century. With the victory achieved in this struggle the craft union definitely established itself as the prevailing type of union in American labor organization for nearly half a century.

#### *(a) Philosophy of Craft Unionism*

The structure of a union must in the very nature of things be intimately bound up with its dominant philosophy. It may be conceivable that a union

made up of workers from a single craft would look forward to the ownership of industry by the workers, but immediately we are aware that there is something wrong with the picture. Craft unionism is not based upon the idea that fundamentally there are two classes whose interests are opposed. It is not based upon the idea that the interests of all kinds of laborers are common or at least common enough to justify a single organization. It is based upon the belief that the interests of a particular craft, or perhaps of closely related crafts, are common enough to call for a common organization. And if craft unionists do not think that all the laborers have common interests, they will hardly work and fight and pray for the day when all the laborers will own the means of production.

Thus the clash between the Knights and the Federation was one of philosophies as well as of structures. The Knights envisaged a fundamental change in the wage system, whereas the Federationists looked forward to a continuation of the system, with better wages. An opportunist philosophy—take what you can get now—has dominated the Federation throughout its history. It is true that there have always been socialists within its ranks, and that these have at times composed a considerable portion of the membership; yet except for the brief period of a year—1894—the opportunists have always been strongly in control.

The philosophy of craft unionism reaches its most extreme form in the railroad brotherhoods. It is well stated in the preamble of the constitution of the Brotherhood of Locomotive Engineers: "The interests of the employer and the employee being co-ordinate, the aim of the organization will be co-operation and the cultivation of amicable relations with the employer and to submit questions of differences to arbitration when an agreement cannot otherwise be reached, and to guarantee the fulfillment of every contract made in its name by the use of every power vested in it. . . . The purpose of this organization shall be to combine the interests of the Locomotive Engineers, elevate their social, moral, and intellectual standing; to guard their financial interests, and promote their general welfare."<sup>5</sup>

The union is made up of skilled and highly-paid workers, very conservative in their attitudes and methods, who have more in common with the employer than with the great mass of unskilled labor. Well-filled coffers and an elaborate and effective insurance plan tend to heighten this conservatism. Ardent believers in the trade agreement, the railroad brotherhoods have devised elaborate systems of machinery for collective bargaining. The strike is their weapon of very last resort. All four of

<sup>5</sup> Preamble of the Constitution of the Grand International Brotherhood of Locomotive Engineers (1927).

them boast a record of fewer strikes, relatively, than any other union in the country, their very strength having a tendency, of course, to lessen the need for force. These unions have been extremely successful. How far may this success be attributed to their structure and their philosophy? How far is it due to other factors that lie beyond their control?

(b) *The American Federation of Labor as the  
Champion of Craft Unionism*

Inasmuch as the life history of the craft union in America has been so intimately bound up with the A. F. of L., and inasmuch as the Federation itself has always been predominantly craft-conscious, this seems the logical moment to examine the Federation's attitude toward trade-union structure. In the first place, it should be noted that the traditional policy of the Federation is to favor craft unionism, although there are still fully developed industrial unions affiliated with it and other constituent unions which show a decided bias in that direction. In 1901 the convention of the Federation adopted, and in 1912 reaffirmed, the "Autonomy Declaration" setting forth its official position. This Declaration states definitely that unions shall be organized on trade lines except in exceptional circumstances. There existed in the A. F. of L., however, a considerable group which strongly advocated a reorganization along industrial lines. A number of resolutions to that effect had been introduced, but all were voted down until the convention of 1934, when a compromise resolution was passed. The executive council was "directed to issue charters for national or international unions in the automotive, cement, aluminum, and such other mass-production and miscellaneous industries as in the judgment of the executive council may be necessary to meet the situation." But care was taken to "fully protect the jurisdictional rights of all trade unions organized upon craft lines and afford every opportunity for development and accession of those workers engaged upon work over which these organizations exercise jurisdiction."<sup>6</sup>

As we saw in the preceding chapter, the A. F. of L. was either unable or unwilling to organize the mass-production industries, and in 1935 the industrial and semi-industrial unions, except for the Brewery Workers, formed the C.I.O., which has become a permanent organization espousing the principle of industrial unionism. This left the craft unionists in complete control of the Federation, but despite this, the Federation has chartered semi-industrial unions in the mine and auto industries. In each

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<sup>6</sup> American Federation of Labor, *Proceedings*, 1934, pp. 586-598.



case, however, the explanation seems clearly to be that the A. F. of L. was using these dissident unions as a weapon designed to weaken the C.I.O. While some observers have noted in recent years what they believe to be a more tolerant policy of the A. F. of L. toward industrial unionism, there is little doubt that the Federation still continues its craft-union policies and philosophy. This does not mean, however, that pure craft unionism is the dominant type. In 1915, Theodore Glocker found that of the 133 national unions, only 28 were craft unions in the strict sense. Most of the unions in the Federation are *amalgamated craft unions*, that is, unions of two or more related crafts which have united, such as the Amalgamated Association of Iron, Steel, and Tin Workers.<sup>7</sup> Moreover, some of these amalgamated craft unions admit helpers or auxiliary unskilled workers, but never with equal voting privileges. The skilled workers maintain control of the union and direct its policies for the benefit of skilled workers alone.

Sometimes several but not all of the crafts making up the trade have united into one union. Usually unskilled laborers are excluded. Often those working in auxiliary trades not confined to that particular industry are also excluded. An example of this type of organization is the Amalgamated Meat Cutters and Butcher Workmen of North America. The union excludes members of auxiliary trades such as engineers and firemen, but claims jurisdiction over all grades of skill in the slaughtering and packing establishments, and also over all sausage makers and meat cutters in stores.

Further evidence of the nonexistence of pure craft unionism, even in the A. F. of L., is to be found in its various "departments." The Building Trades Department was organized in 1908 after several unsuccessful attempts to federate the various craft unions of the building industry on a national basis. It was preceded also by the organization of numerous local building-trades councils which had proved to be highly successful. The chief function of the Department is to bring about more unified action on the part of crafts having much in common and particularly to settle the numerous jurisdictional disputes which are inevitable in such an industry. The Metal Trades Department was organized in 1909 with a similar purpose. This was followed in 1912 by the Mining Department, later abolished, and in the same year by the Railroad Employees' Department.

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<sup>7</sup> Theodore Glocker, "Amalgamation of Related Trades in American Trade Unions," *American Economic Review*, 5.554 (Sept., 1915).

It may, therefore, be seen that the A. F. of L. is not organized along strictly craft lines, although it remains true that the craft idea is dominant in the Federation. This appears not only true in its structure but in the principle on which the A. F. of L. is founded—autonomy of the constituent unions. This will be treated more fully below.

### THE INDUSTRIAL UNION

Strictly speaking, a treatment of industrial unionism should include the Industrial Workers of the World. But the I.W.W. constitutes a class by itself. In the first place, it differs from the regulation industrial union structurally in that, although it combines, or aims to combine, the workers by industries, it carries the idea a step further and seeks to unite them into one central organization. Its most significant difference lies in its philosophy and methods. Primarily a revolutionary union, it has no use for the traditional trade-union methods, collective bargaining, the trade agreement, legislation, insurance, and the like. Since the I.W.W. has apparently passed out of existence, it and others of the same type of revolutionary unionism whose importance has waned will not be discussed further.

Under the sponsorship of the C.I.O., industrial unionism has, in recent years, assumed an importance in the American labor movement heretofore denied it under the craft policies of the A. F. of L. The industrial union has now invaded most of the segments of large-scale industry, and the largest union in America, the United Automobile Workers, is an industrial union with a membership of over one million. Other large industrial unions are the United Steel Workers with more than 700,000 members, the Electrical Workers with approximately 400,000 members, and the Rubber Workers with over 125,000 members.

#### *(a) Criticisms of Craft Unionism*

From the beginning there was manifest in the Federation some measure of discontent with the craft form of organization. Although the Federation has admitted industrial unions and although it has allowed other tendencies in that direction to develop, it has done so reluctantly, changing its position, if at all, only under real pressure. Hence the barrage of criticism against craft unionism has generally been leveled at the Federation.

Dissatisfaction with craft unionism and with the Federation's adherence to it has grown with the development of industry. Advocates of the industrial form of organization point to the numerous jurisdictional disputes

which rack the trade-union world. They remind us that these disputes cannot be settled permanently, that an agreement is barely reached when a change in methods of production renders it useless and creates a new bone of contention; and they insist that the uniting of all the workers in each industry would eliminate these disputes. They quote Gompers himself as saying that jurisdictional disputes are one of the most important factors in retarding the development of organized labor. They remind us that the machine is fast breaking down the old craft lines, pushing the skilled worker down into the semiskilled class or even into the unskilled; and that no one knows where it will strike next. If it could be foreseen which crafts would go unscathed and which crafts would not, the former could retain the craft form of organization and the latter could organize industrially. No such foreknowledge is vouchsafed to the workers. The skilled who think themselves secure from the competition of the semiskilled and unskilled workers have built their houses on sand. At any moment they may find themselves drawn into a competition so fierce and so deadly that their craft organization will be powerless to extricate them.

Again, it is argued, when the different crafts working in an industry are organized on a craft basis, the employer is left in possession of the advantages of industrial bargaining. In negotiating with the various crafts separately, he can play off one craft against another. To powerful groups in a strategic position he will make concessions which will satisfy them. Then when the others demand better conditions, the privileged group will refuse to quit work. Sometimes, as on the railroads before a degree of cooperation was established, such groups have actually helped the employer to break a strike. The reverse may also occur. Most of the employees may be fairly well pleased with conditions. But a highly skilled group, difficult to replace, may make demands, be refused, and go on strike; and as a result the whole industry is closed down when a majority of the workers have no immediate grievance.

In some respects the most vulnerable point in the craft unionists' armor is their apparent inability to cope with the giant business organizations that have grown up within recent years. Their assailants claim that in order to accomplish anything, labor must present a united front, and that this can be done only by organizing in a way that corresponds to the prevailing system of organization in industry. Until the organization of the C.I.O. most of the great industries of the country remained practically untouched by unionism: iron and steel, automobile manufacture, oil, and textiles. For this failure the Federation must be held responsible, for the C.I.O. did organize these industries.

*(b) Philosophy of Industrial Unionism*

We have already observed that there may be a connection between a union's structure and its philosophy. A union organized on an industrial basis says to the world that the interests of the skilled workers in that industry and those of the unskilled and semiskilled are one. As a result, industrial unions tend to have a greater feeling of solidarity or of class consciousness among their members.

Present-day industrial unions, however, have not developed excessive radicalism. This is partly the result of the influence of the central C.I.O. organization in siding with the conservative faction in intra-union disputes, such as occurred in the automobile workers' union. While industrial unions today tend to be more liberal, if not radical, in their practical philosophy, they are unquestionably business unions devoted to collective bargaining to improve their status within the present system rather than attempting to change the system. Even in unions which have been called "socialistic" or "communistic," collective bargaining has become the first consideration of the union.

Perhaps the chief difference in the philosophy of the industrial unions as compared with the craft organizations is the interest in government action in labor relations. To be sure, craft organizations in recent years have sponsored legislation that the founders of the Federation of Labor would have thought should have been left for collective bargaining, but industrial unions have gone still further in basing their reliance on government agencies. The group solidarity developed in the industrial type of organization has led to a more vigorous interest in political action. Thus the fear of the craft union that what the government gave, the government could take away, has given way to the philosophy that, by political action on the part of the union, the giving and taking away of privileges by government can in a large measure be controlled.

## THE NATIONAL UNION

The most important unit in the two central American labor organizations is the national union. The sovereignty in both the A. F. of L. and the C.I.O. rests with the national or international bodies. It is very difficult to analyze the national union because there are nearly two hundred unions in the United States and no two of them are exactly alike. Far from being patterned after the carefully devised scheme of a few leaders, each has emerged with unique traits from its own special background of experience. Each craft or industry has wrestled with its own peculiar

problems and in the sweat of its brow has contrived its own peculiar methods of dealing with them.

Nevertheless there stand out certain broad characteristics which are common to most of the unions. The union is usually made up of three parts, distinct but definitely related to each other. There is the central body—the national or the international—and there is the local union. These are the important units. Then there is generally a body between these two that represents a division or a district. Sometimes, as in the case of the United Mine Workers, there is also the sub-district, but the local union is the unit upon which the organization is based.

In practically every case the national organization is designated as the sovereign body, the amount of its actual power varying with the different unions. The convention of the national union is the great legislative and controlling body, although its importance seems to be on the wane. It is a delegate group representing the various locals. There is no uniform basis of representation. Sometimes by various methods the larger locals are given less representation proportionately than the smaller ones. In all the unions every local is entitled to at least one delegate. There is a wide variation in the frequency of convention meetings. Some unions meet annually, as do most of the C.I.O. affiliates, some biennially, as do the bricklayers and the textile workers, and some every four years, as do the carpenters. Sometimes long intervals have elapsed between conventions. After convening in 1880 the granite cutters did not meet again until 1912. The cigar makers met in 1912 after a lapse of sixteen years, and then did not meet again until 1920.

The convention both helps and hinders. Enthusiastic members are necessary to a thriving union, and fairly frequent meetings of delegate bodies can scarcely be surpassed as a means of working enthusiasm up to a high pitch. But the calm, dispassionate deliberation which is required for the successful formulation and execution of union policies is not fostered by the charged atmosphere surrounding a convention. In speaking of the printers' union Professor George Barnett says, "As a substitute for a small and representative executive council, the annual session is an archaic and inefficient institution. In session for only a week, feted on every possible occasion by the entertaining union, with a membership so large as to make deliberation impracticable, the supervision which it can exercise over the work of the officers is necessarily slight."<sup>8</sup>

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<sup>8</sup> George Barnett, *The Printers* (American Economic Association, 1909), p. 69.

Despite the objections to the convention, the international unions seem to feel that such an effort to obtain representative democracy is well worthwhile, and three-fourths of all of the international constitutions, both of C.I.O. and A. F. of L. affiliates, provide that conventions be held annually or biennially. In a recent study of American Labor Unions, Miss Florence Peterson states, "Because of the importance of the convention as the final authority on all union matters, the frequency and regularity with which they are held, the distribution of voting power, and the manner in which business is conducted are important criteria of a union's democratic administration."<sup>9</sup>

Quite prominent in the governmental systems of trade unions is the referendum. This is one thing that is helping to push the general convention off to one side, particularly with respect to certain decisions where it is felt that the entire membership should be consulted. It is used chiefly for purposes of amending the constitution and electing officers, but also on occasion to determine some particular union policy such as the calling of a strike or affiliating with one of the central organizations. It was introduced largely to prevent control by a minority, which proved to be almost inevitable under the convention plan, but so far it has not come up to expectations in that regard. Unless the issue is of great immediate interest to the entire membership, as when a strike is under consideration, the voting is relatively light. The unions are here faced by one of the most serious problems of democracy, control by a minority instead of the majority owing to light voting; and neither the convention nor the referendum has provided a satisfactory solution. Of the two the referendum seems to be the better expedient and probably will be retained for some time to come by the unions now employing it.

Between conventions the national officers are usually the group that formulates policy. The real leader of the union, in fact, is the president, and usually he has a corps of fellow officers: the vice-president (sometimes a number of vice-presidents who are really his assistants), the secretary, and the treasurer. These officers, together with other elected representatives, usually compose an executive board or council. The executive board exercises a great deal of power, particularly if the convention does not meet frequently. Although the terms of the elected officers are short, oftentimes the president actually serves a long time. One president of the carpenters' union served uninterruptedly for a period of twenty-five years. The present president of the miners' union has been in office since 1919. The

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<sup>9</sup> Florence Peterson, *American Labor Unions* (Harpers, 1945), p. 62.

president of the granite cutters' union resigned in 1923 after having been in office for twenty-eight years.

These long periods of service do not necessarily imply unshaken confidence on the part of the rank and file. A president in office can find numerous ways of entrenching himself. Many of the paid officers directly or indirectly owe their jobs to him and they know on which side their bread is buttered. The rank and file has repeatedly demonstrated its dislike of too great centralization of power, but only in few cases with much success. One of the most pressing problems of unionism is that of making the officers more responsible to the members.

### THE LOCAL UNION

Next in importance to the national union is the local. As a matter of fact, historically the local came first. Not until there existed a large number of locals in a particular craft would a national union be formed. At the present time the order is usually reversed. One of the main functions of the national union is to organize locals, indeed the large unions maintain a permanent staff of paid organizers for this very purpose. In some trades there are only local bodies. Sometimes this is true because the nature of the trade is not such as to demand a large national body, and in other cases organization of the trade as a whole has not gone far enough to warrant the forming of a national body. In either case the locals may affiliate directly with the Federation, or with the Congress of Industrial Organizations. As part of its organizing procedure, the Federation establishes directly affiliated unions called federal unions. The members of such unions may be craftsmen of several types, but when enough of a particular craft has been organized the members of that craft withdraw from the federal union to form a new local affiliated with the international for that craft. In the C.I.O. when a sufficient number of directly affiliated locals are organized in a particular industry, they are combined into an international union or into an organizing committee until they can finance and operate themselves.

The amount of power actually exercised by the local is largely contingent upon the nature of the trade or industry. In some trades the major interests are of quite general concern and in these the central body exercises minute control. This is apt to be true where a somewhat uniform product is being produced for a relatively large market, as in the case of coal. In an industry like building, on the other hand, where many of the major interests are confined to particular places, the central body gives a great deal of

freedom to the local. There is the matter of strikes, for example. A strike, to be effective, must place the employer at a disadvantage. Suppose the carpenters are engaged in the construction of a building and a dispute arises. Theoretically the strike must be sanctioned by the central body, but by the time the officers have made an investigation and authorized the strike the building might be completed, or so nearly completed that the value of the move would be lost. Consequently a great deal of freedom in strike control is granted to the carpenters' locals and to the locals of the other unions in the building trades.

Another restraint upon the power of the locals to call strikes is the need of that particular local for strike benefit funds. If the local itself is well off financially, it may be allowed more freedom in ordering strikes than when the international union must feed the strikers.

Usually the government of the local union rests with the mass meeting, the members gathering together every so often to transact their business. Although this meeting generally combines all functions, legislative, executive, and judicial, the local union has one officer who is really important. This is the business agent, sometimes called the walking delegate. The office of business agent has grown out of the obvious disadvantages which attend bargaining by unpaid officials. These the employer is quite apt to regard as undesirable agitators, and if he does not actually discharge them, he may find other means of punishment. Then again, the business to be carried on by a large local union is so great that there is a real need for at least one official to spend full time on union business, such as handling plant grievances. Finally, the employees are often not, like the employer, versed in bargaining tactics and cannot always negotiate with him on equal terms. The situation demands a man who is qualified by experience or by innate ability, or by both, to bargain in a shrewd and competent manner, and who can devote the necessary time and energy to the performance of this vital task. In addition to being a specialist in bargaining the business agent discharges other functions which contribute to his power. Among these there is sometimes the duty of calling strikes. Business agents in the building trades usually have this power. From one point of view this is advantageous because at times it is necessary to strike with great precipitateness; but from another it is not, as it subjects the business agent to great temptation. Not all business agents, of course, are given as much power as those in the building trades, but so far as can be judged, cases of graft among business agents are relatively more frequent than among any other group in the labor movement.



Although trade unions as a whole are not graft-ridden, they must admit to a considerable amount of corruption; and no small share of this has grown up around the business agent, particularly in the building trades. An understanding of unionism, and more especially of the employer's attitude, cannot be had without some knowledge of the corruption that has insinuated itself into the unions, with lasting injury to the workers.

One Skinny Madden was for many years in control of the Chicago Building Trades Council. In 1909 Madden was convicted, together with two other men, of obtaining money from employers "under false pretenses." During their trial Luke Grant, formerly connected with the U. S. Industrial Relations Commission and also formerly business agent for the carpenters, stated that Madden had demanded a bribe of \$20,000 on the Insurance Exchange Building, or \$1000 a floor. He was given \$10,000 and the work stopped at the tenth floor. A favorite saying of Madden was, "Show me an honest man and I'll show you a fool." He made a great deal of money by selling strike insurance, declaring strikes and then calling them off for cash, and fining employers for infractions of union rules.

One of the cleverest "money makers" was Robert Brindell, who held sway in the building trades of New York City from 1919 to 1921. The Lockwood Committee created by the legislature of the state of New York to investigate the high cost of building in New York City uncovered a great deal of graft that had occurred during the reign of King Brindell. Brindell's method was described by H. F. Robertson, a contractor, in testimony before the Lockwood Committee: "I think it was Brindell who used the term strike insurance. This was insurance against any labor trouble on the job. He said that if we could get strike insurance it would be a good thing to have. I wanted to know what kind of an arrangement we could make. He quoted the sum. He said he wanted \$50,000 for 'strike insurance.' He wanted \$20,000 immediately and the rest of the payment to come along on request to be strung along." Robertson stated that after an appointment with Brindell "he took me back to the office in an automobile and I put \$20,000 on the seat of the auto. I charged that \$20,000 to sundry expenses." Brindell was later sentenced to from five to ten years in the penitentiary for accepting a bribe of \$5,000 from an employer for settling a strike.

Following its investigation the Lockwood Committee concluded that thousands of dollars nominally expended in the construction of buildings went into the pockets of grafters.

Immediately the question arises as to how such conditions can exist. Why do the rank and file of the workers allow dishonest men to get and to keep control? Why do the employers submit? In the first place it may be said that the rank and file of workers are not very different from the rank and file of the people as a whole. Why do not the voters of the country rise up and smite the grafters in our government? Briefly, because the rank and file of the people, including the wage earners, are not greatly concerned about graft and corruption unless the money comes out of their own pockets. One of the union members stated this point of view very clearly in speaking of Sam Parks. "Once a workman in the iron trade got \$1.50 a day. Parks rose, became our Moses, and led us into the promised land of \$5.00 per day. Suppose Parks has grafted, more or less, and made a bunch of money, he did not get it out of us."<sup>10</sup>

Moreover the workers might not be able to dislodge the leaders even if they wanted to. A trade-union leader is apt to have a "machine" just as a political leader has. And how many political machines have the voters demolished?

The contractors frequently find it less expensive to pay the fines, the premiums on "strike insurance," and other fees, than to bear the cost of strikes, interrupted building, and loss of business to competitors. The way is made easier for them by the fact that under the "cost plus" method of operation they have no difficulty in passing the cost of graft on. Under this method, which is used on a large scale in the building industry, the owner agrees to pay all the costs plus a fee to the contractor. He also has too large an investment at stake to take chances on delays in construction.

It must not be concluded from the foregoing that all business agents are crooked; but there is no doubt that the development of their office into a position of great power, necessary as that development seems to have been, has opened the way to grave abuses and has presented the unions with a problem in government which they must somehow solve if they are to win the confidence of the public.

In the district union a representative assembly replaces the general mass meeting. The form of government is quite similar to that of the national union. There is a great variety in methods of representation, the use of the referendum, and the amount of control vested in the officers and the executive council. The district council does not, or course, deal with such

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<sup>10</sup> W. G. Haber, *Industrial Relations in the Building Industry* (Harvard Press, 1930), p. 322.

momentous matters as does the national union, although there is some similarity. As a matter of fact its responsibilities and power are rather less important than those of the local. It is largely an administrative unit with comparatively little actual power.

#### THE AMERICAN FEDERATION OF LABOR

The A. F. of L. is composed of unions and not of individuals. Its membership consists chiefly of national and international unions, but also includes central labor bodies, state federations, local trade and labor unions, and departments. The looseness of its organization cannot be over-emphasized. It does not have a tremendous amount of legal power. Such power as it has is largely a matter of moral influence.

The important governmental factors are the convention and the executive officers. The seat of authority is in the convention, composed of delegates from the affiliated organizations assembled annually. The actual control of the organization is vested in the national and international unions. This is clearly seen when the methods of representation and distribution of voting power are examined. In the case of the national and international unions, representation is based on the size of the membership, with the smaller unions being given a proportionately greater representation than the larger ones. In the case of the other affiliated bodies, one representative is granted to each. In the matter of voting, the representatives of the national unions and local unions are given one vote for each one hundred members or major fraction thereof which they represent. The representatives of the other associations are given one vote each. The distribution of representatives and voting power in 1943 is shown by the figures for the convention of that year.<sup>11</sup>

No. of Unions	Name	No. of Delegates	No. of Votes
89	National and international .....	321	59,179
4	Departments .....	4	4
39	State bodies .....	39	39
141	Central labor unions .....	141	141
58	Local trade and federal labor unions .....	58	477
3	Fraternal organizations .....	4	3
<hr/> 334		<hr/> 567	<hr/> 59,843

<sup>11</sup> American Federation of Labor, *Proceedings*, 1943, p. xxiv.

The executive council is composed of the officers of the Federation elected annually at the convention—namely, the president, fifteen vice-presidents, a secretary, and a treasurer. The council is an extremely influential body in that it carries out the policies of the Federation. In doing this it does not limit itself to a mechanical execution of the wishes of the convention as expressed in the resolutions adopted, but interprets in a large way the general policies of the organization and then exercises its judgment as to the best methods of putting them into effect. The members of the executive council have enjoyed long terms; with the exception of one year, Samuel Gompers was president from 1886 until his death in 1924, and Frank Morrison served from 1896 until 1939. Even with the addition of the seven newly-created vice-presidents in 1934, nearly all executive council members have had extended terms. Since these members of the council represent generally old and established trade unions, the conservative craft union policies of the Federation have been accentuated, and the executive council has the reputation of being more dedicated to craft unionism than the rank and file members.

Of definite legal power over the national unions the Federation has little because it has desired little. Its officers have carefully preserved the autonomy of the unions. Each union is a sovereignty in itself and may carry on its work without any great apprehension of interference on the part of the Federation. Such interference the officers have sedulously avoided except where they have felt that a fundamental principle, such as industrial unionism, was at stake. On many occasions President Gompers spoke of this policy of noninterference as being the most significant factor in the success of the organization. "The affiliated organizations," he said on one occasion, "are held together by moral obligation, a spirit of camaraderie, a spirit of group patriotism, a spirit of mutual assistance. There are no coercive methods used by the A. F. of L. to prevent the withdrawal or secession of any affiliated organization. . . . When an international union affiliated to the A. F. of L. refuses to carry out convention resolutions applying to members of that trade, the A. F. of L. has no power to enforce its judgment.

" . . . All the actual power outside of the moral power that the A. F. of L. possesses is the power of expulsion from membership in the Federation. . . . The moral force of the A. F. of L. is the most effective influence or power it has in dealing with allied organizations." <sup>12</sup>

Such tangible power as the Federation possesses centers largely, as Gompers pointed out, in the right to issue and to withdraw charters. The most important requirement specified by the Federation in granting charters

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<sup>12</sup> Samuel Gompers, *The American Labor Movement* (A. F. of L., 1914), p. 8.

is that there be a clear and positive definition of the trade jurisdiction claimed by the applicant; and if the jurisdiction overlaps upon that of a union already affiliated, the charter will not be granted without the consent of that union. Some power resides in the use of the Federation's strike fund since the council will not grant aid unless it approves of the strike. The executive council has the power to levy an assessment on the unions or it may issue appeals for funds for any member union engaged in a strike. The Federation has been reluctant to levy assessments and consequently the amount of assistance given to unions through assessments has been quite negligible. Much more effective has been the method of appeal. Appeals for strike funds were made quite frequently in the early years of the Federation. This was because the new national unions were not in a position to finance their own strikes. Although the method has not been abandoned—\$418,000 having been raised for the 1919 steel strike, \$200,000 for the 1925 anthracite coal strike, and \$500,000 for the 1927 bituminous coal strike—it has been used sparingly in recent years. The Federation is anxious that the unions rely more and more on their own efforts. Many of the national unions have built large "war chests" of their own. The result is that as the unions become stronger financially they rely less and less upon the Federation for help, and so the power to withhold strike funds becomes less and less effective as a weapon to control the activities of the member unions.

In the last analysis the real power that the Federation has is moral power. The success of the Federation attained at the expense of the Knights of Labor was to a very large extent the result of its policy of allowing member unions to preserve their own autonomy. And the national unions have been very jealous of that right and throughout the years have interpreted trade autonomy in the strict sense. The advent of the C.I.O., however, and its subsequent organization as an open rival of the A. F. of L. marked at least a temporary decline in the Federation's moral power. In 1936 the Executive Council suspended most of the members of the C.I.O. and in 1938 formally expelled the C.I.O. unions from the Federation. Whereas in the past the moral pressure of the Federation, backed by the power to withdraw the charter of an individual union was a fairly effective force, the establishment of another complete organization obviously weakened it. Both A. F. of L. and C.I.O. have raised funds, propagandized, and supported rival unions in an effort to undermine each other.

The success of such an organization as this must depend to a very large extent upon the type of personalities in control. Moral prestige is built around personalities; and so if moral prestige is to be the important

factor, personalities take on primary significance. Such has been the case with the Federation, as was emphatically shown in the case of Samuel Gompers. Gompers was a man with a strong character that was bound to make itself felt in any gathering. He was also able to bind men to him with a compelling sense of loyalty. As a matter of fact, it is not at all impossible that one reason why the Federation has not attempted to take unto itself greater legal power is because Gompers was able to exercise as much power as he desired simply through the force of his personality. Although an able man in many ways, President Green has not been able to impress himself upon the labor movement to the extent necessary for actual direction of policies. The result has been a general weakening of the Federation's influence since 1924—in this decline, of course, other significant causes have also played their part. In recent years, the Federation has strengthened its central authority, but the inspiration of this centralization seems to have been more to seek a means of combating the C.I.O. than the hope of devising a method of meeting intricate economic problems.

If the Federation does not exercise detailed control over the policies of its constituent unions, what then does it do? Its fundamental and primary function is to extend organization. This function as formulated in its constitution consists of four specific tasks. The first is to form local trade and labor unions with the ultimate aim of combining them into national unions, the local union being taken into the Federation as a member until there is a national organization through which it can hold membership. A second is to promote and advance the interests of such bodies after they have been organized and also to advance the interests of national and international bodies. A third is to establish departments, composed of national unions, for the purpose of aiding the growth of these unions. The fourth is to organize city central trade and labor unions and state federations to help the work of the local unions.

The machinery for carrying on the organizing activities of the Federation is relatively simple. A regular staff of organizers appointed by the executive council is maintained. Some of these work full time, while others work part of the time as organizers and part of the time at other tasks which need to be performed for the Federation or for member unions. There are also some volunteer organizers, and the officers of city centrals and state federations sometimes give a considerable share of their time to the work of organizing.

The Federation has no clear-cut organizing policy. No evidence of a long-time plan has as yet been given. The strong, well-established unions

usually take care of their own organizing, whereas the weaker ones are constantly making appeals for aid. Every national convention hears numerous appeals of this kind. Resolutions are often passed only to be ignored by the executive council. If the union calling for aid is of the traditional A. F. of L. type, aid is more apt to be given than if it has the reputation of being "radical." Sometimes the Federation is drawn into an organizing campaign much against its wishes, as in the southern textile campaign of 1929-1930. The result is usually a half-hearted effort, followed by early withdrawal. In many ways it was the failure of the executive council to take advantage of the organizing opportunities provided by partial recovery and the New Deal legislation which led directly to the formation of the C.I.O.

The Federation has an important function in trying to obtain favorable legislation for organized labor. Although for a time its industrial program overshadowed its legislative activities, during recent years interest in the latter has been increasing steadily. This subject will be discussed in another connection.<sup>13</sup>

Then there is a group of activities that might be termed educational: the cultivation of a sympathetic public opinion, the building up and the maintaining of friendly relations with employers for the purpose of promoting the general union program of collective bargaining, and the fostering of formal educational classes for the workers themselves.

The Federation also feels called upon to maintain peaceful and harmonious relations among the constituent unions. A policy that has loomed large in the history of the Federation is that which calls for the maintenance of but one union in any one craft, or in any one industry where the member union is organized on an industrial basis. Dual unionism has always been anathema to the A. F. of L. The Federation has also attempted to use its good offices in the settling of jurisdictional disputes after they have arisen.<sup>14</sup>

An explanation of the functions of the A. F. of L. would not be complete without some attention to the departments—the Union Label Department, the Building Trades Department, the Metal Trades Department, and the Railway Employers' Department.

The Union Label Department differs in its aims and activities from the other three. The purpose of the union label is the same as that of the boycott, but its action is positive instead of negative. Unionists and others, instead of being urged not to buy certain goods, are urged to buy goods bearing the union label. The device is legal and has proved quite popular

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<sup>13</sup> See Chapter X.

<sup>14</sup> This will be considered in the following chapter.

in the United States, although little used in other countries; but its effectiveness is open to question.

In 1909 the Federation organized the Union Label Department for the purpose of providing a central agency for advertising the union label and promoting its use in general. Membership is open to all affiliated unions using labels or buttons to mark products made by their members or to distinguish the members themselves. The principle of trade autonomy has been a limiting factor in the development of the department. The unions have been very reluctant to delegate any real power to it and consequently its work has been largely limited to propaganda. That no great success has resulted from its efforts is not wholly due to lack of efficient work on its part. Factors largely beyond its control have been mainly responsible. Union members themselves have been indifferent to the label, price and convenience being too influential, and the general public has been even more apathetic. It does not appear that the label will ever become a powerful weapon of unionism.

The other three departments of the Federation are concerned largely with the collective bargaining activities of the affiliated unions. The Building Trades Department was organized primarily for the purpose of handling jurisdictional disputes. It has had a most stormy career which is recounted in some detail in connection with the problem of jurisdictional disputes.<sup>15</sup> The Metal Trades Department includes national unions, local trades councils, district councils and state councils, actual control resting with the national unions. Its chief purpose has been to promote organization and joint action in dealing with employers. It has been called upon to perform a different kind of task from that which brought the Building Trades Department into being. It has been almost free of jurisdictional troubles; but the substitution of machinery for skilled labor in the metal trades has made particularly rapid progress and uniform organizing tactics have been rendered almost impossible by the wide range of the industry. The Metal Trades Department has not, however, achieved the importance which its function warrant.

The Railway Employees' Department is organized on a basis somewhat different from that of the other departments. It consists of three sections: section one includes the switchmen's union; section two, the six shop crafts; and section three, the firemen and oilers and the maintenance of way employees. Although it has not always been so, the authority in this department, as in the others, rests with the national union. The Railway

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<sup>15</sup> See Chapter VII.



Employees' Department has fostered more joint action than either of the other two departments and of late years has concerned itself largely with unemployment relief and the stabilization of employment.

The functions of the state federations and of the city centrals are not unlike those of the Federation itself, although the influence of these bodies is naturally much less. They exercise no compulsory powers over the unions in the state or in the city, their activities being largely confined to the obtaining of favorable legislation. Owing to the nature of our political system, the latter function is especially important since most of the legislation that we have is, of course, state legislation. The state federation is made up of delegates from locals, city centrals, and the various councils.

### THE CONGRESS OF INDUSTRIAL ORGANIZATIONS

The structure of the C.I.O. is essentially like that of the A. F. of L., being a federation of autonomous industrial unions with power vested in the annual convention. Instead of an executive council, it has an executive board which carries on the functions of the Congress between conventions. The executive board is composed of the president, nine vice-presidents, the secretary, and a representative from each national affiliate. Forty-one national and international unions and organizing committees are affiliated with the Congress. Like the A. F. of L., the C.I.O. has set up regional and subregional offices called Industrial Union Councils attached directly to the parent organization. Of these, thirty-five are state industrial councils and one hundred and thirty-three are county or city councils, corresponding to the A. F. of L. state federations and city council. Local Industrial Unions chartered directly by the C.I.O. correspond to federal trade and labor locals in the A. F. of L. By 1944 one hundred and thirty-one such local Industrial Unions had been organized. These are grouped into a new union whenever conditions made it possible.<sup>16</sup>

The functions of the C.I.O. are similar to those of the A. F. of L. In its Washington office the C.I.O. maintains a staff of legal and economic experts who help the affiliated unions as well as assist the Executive Board in the formulation and execution of policies. These experts often work in close cooperation with various federal agencies dealing with labor matters.

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<sup>16</sup> *Proceedings of the C.I.O.*, 1944, pp. 22 and 107.

Among the important activities of the Washington office is the publication of periodicals and pamphlets dealing with C.I.O. matters. The *CIO News* and the *Economic Outlook*, which are widely distributed among members and those interested in labor, are excellent examples of the labor press. C.I.O. sponsored radio programs are another way in which the organization's able publicity department disseminates labor's viewpoint upon various economic, social, and political questions.

The C.I.O. has taken a very active part in organizing and has 180 staff organizers to assist its member unions and to organize in industries which are not included in any of its affiliated national organizations. In the early days of the C.I.O. organizing committees were the rule and such prominent unions as the Textile Workers Union of America and the Steel Workers started as the Textile Workers Organizing Committee (TWOC) and the Steel Workers Organizing Committee (SWOC). At the present time there are still a few committees but these are rapidly receiving charters as affiliated unions.

Since it is made up of industrial unions, there is no need in the C.I.O. for the departments by means of which A. F. of L. affiliates seek to settle jurisdictional disputes and consolidate for collective bargaining and organizing purposes. Although it has no department to further the use of the union label, the C.I.O. does carry on that phase of union activity.

Certainly among the most important functions of the C.I.O. is the work with legislative matters. Representatives of the organization follow various bills through Congress and through state legislatures; then through the mediums of the C.I.O. and its affiliated Political Action Committee, they seek to bring pressure to bear upon legislators to pass favorable legislation and defeat unfavorable bills. This function of the C.I.O. will be discussed more completely in a later chapter.

It is probably true that in its early days the C.I.O. was influenced by the United Mine Workers of America to a greater extent than any craft union ever influenced the A. F. of L. President Lewis of the United Mine Workers was president of the C.I.O. from its inception to 1940 when Philip Murray was elected upon the resignation of Lewis in accord with his sensational promise to resign unless Willkie won the 1940 election. The change of presidents apparently was a healthy change for the C.I.O., and the subsequent break between Lewis and Murray followed by the withdrawal of the miners from the C.I.O. has made the C.I.O. completely independent from the United Mine Workers.

## SOME CONCLUSIONS

The great issue dividing the A. F. of L. and the C.I.O. is that of craft v. industrial unionism. The outcome of the struggle remains indeterminate, but, if one may venture a prediction based upon the present, it appears that the outcome will remain indeterminate; that is, one group will thrive in industries particularly suited to craft unionism and the other in mass production industries, with a large overlapping sphere in which sometimes a rigorous, sometimes desultory competition will be carried on for members. Judging by immediate gains, the appearance of two rival central unions based upon opposing principles of organization has acted as a tonic to the labor movement, for not only has the C.I.O. organized several million previously unorganized workers, but also the A. F. of L. has extended its organization with renewed vigor.

On the other hand, it is evident that many an employer has suffered labor troubles not as a result of any legitimate grievance by his workers but because he was caught between rival unions struggling for mastery. While these cases are a serious charge against the labor movement, there are not so many of them as their publicity would lead the public to believe. A more serious potential danger of a disunified labor movement is that the liberal forces will be thereby weakened and unable to prevent a conservative reaction or a fascist menace, such as the deprivation of civil liberties. It is such unanswerable questions as these which must be settled before any judgment may be reached as to the ultimate result of the labor split, and clearly it will be by history rather than by prognostication that they will be settled, if at all.

Judging by present indications, we may conclude that both the A. F. of L. and the C.I.O. unions are, in general, business organizations concerned almost wholly with improving the workers' immediate position, primarily by means of collective bargaining. Of course, there are radical individuals and unions in both groups, but it is "business unionism" which sets the tenor of the large majority of unions.

Although it has attracted less attention than the rather sensational struggle between industrial and craft unionism, a more fundamental issue at stake in the union movement is that of intra-union democracy, or securing responsibility of the officers to the rank-and-file members. The problem is essentially the political problem which many counties and cities, one or two states, and several countries have failed to solve, for there are boss machines in a multitude of cities and counties of the United

States; we have Huey Longs and Mayor Hagues; and we know that many democracies have succumbed to dictatorship. In the labor movement, too, there are examples of unions in which a machine has gained control, yet it is, perhaps surprising that there have been so few, considering the political inexperience of the workers and the great centralization of power in the hands of union officers which constant attacks have necessitated. Indeed, it is often only after a union has become firmly established that it can afford the luxury of greater rank-and-file control. The future of the American labor movement may well depend upon how well it can solve the political problems of democracy within the unions.

## CHAPTER VII

### TRADE-UNION JURISDICTION

CLOSELY bound up with the problem of structure is that of jurisdiction. Since the trade union is organized for purposes of control, there must be a certain well-defined territory over which it claims jurisdiction, for obviously two unions in the same trade cannot very well cover the same territory. Not only does a union claim jurisdiction over a particular territory but it must claim jurisdiction also over a particular group of men. This claim may be delimited by the boundary lines of an industry or by those of a craft or trade, depending upon whether the organization is a craft or an industrial union. These jurisdictional boundaries must be carefully worked out if the unions are to function effectively.

When we say that a union has jurisdiction over a certain territory, we mean that the national union has, or claims to have, the exclusive right within this territory to charter and affiliate local unions. Through control over its local unions it has indirect control over the individual members; and it has assumed control over members who are outside the jurisdiction of any of the branches and yet within the territory of the national union. What has been said with regard to the exclusive character of the national union's jurisdiction applies with equal force to local jurisdiction. When a local union claims control over a certain territory, it asserts its sole right to organize and affiliate all persons practicing that trade or working in that industry within that special district.

In addition to defining the territory over which it claims control a union must define the kinds of work over which it claims control in that territory. In either case control means exclusive control. It is no easy matter to mark out these jurisdictional lines in the first place, but oftentimes this seems a trifling annoyance beside the trouble they cause later on. An independent union may arise, claiming jurisdiction over some or all of the territory covered by the older union. Changes in the processes of production may alter trade lines to such an extent that the older agreements become obsolete and new ones must be devised.

As the general public is seldom brought into direct contact with these problems of jurisdiction, it does not realize their full significance. Yet they

are the bane of the trade union's existence and one of the main hindrances to its progress. Sidney and Beatrice Webb assert, "It is no exaggeration to say that to competition between overlapping unions is to be attributed nine-tenths of the ineffectiveness of the Trade Union world."<sup>1</sup> Samuel Gompers was no less emphatic: "Beyond doubt the greatest problem, the danger which above all others threatens not only the success, but the very existence of the American Federation of Labor, is the question of jurisdiction. I am firmly convinced that unless our affiliated national and international unions radically and soon change their course, we shall at no distant day be in the midst of an internecine contest unparalleled in any era of the industrial world. . . ." <sup>2</sup>

#### DUAL UNIONS—TERRITORIAL JURISDICTION

Dual-union disputes have become less numerous with the development of unionism on a national basis. In the early days of unionism, locals would organize and then in trying to expand would come into conflict with other locals which were trying to do likewise. With the development of national organization much of this friction has been eliminated. The national union marks out the lines of jurisdiction for the local, usually requiring the consent of existing locals before chartering others if there is any prospect of trouble. The fact that it is now customary for the national union itself to organize locals also tends to preclude jurisdictional troubles of a local nature. Yet still they persist. The members of a local may not wish to turn over their control to a national body and so may refuse to join the national union. Independent locals are permitted to affiliate with the American Federation of Labor only if there is no affiliated national union organized in that trade or industry, being otherwise required to join the national union. Sometimes they refuse to comply, and in this event the national union may organize another local in that same district and jurisdictional trouble will start.

Thus with the organization of national unions, disputes over territorial jurisdiction diminished but did not disappear. Unhappily, territorial disputes are not always merely local. Sometimes two national bodies claim jurisdiction over the same territory. The American Federation of Labor has never countenanced dual unionism, having consistently refused to affiliate any union in a trade which already has an affiliated union. This policy, vigorously enforced, has done much to eliminate these national disputes; but

<sup>1</sup> Sidney and Beatrice Webb, *Industrial Democracy* (Longmans, 1920), p. 121.

<sup>2</sup> *The Steam Fitter*, April, 1903, p. 2.

if it is to be adhered to, the only possible solution of a dual-union dispute is reduction of the two unions to one, a solution which can seldom be reached except after bitter and prolonged strife. The unions are fighting for their lives, and the only possible compromise is an amalgamation taking satisfactory account of the interests of both sides. This is a difficult solution to determine, and the result is that a great many of the dual-union controversies have been brought to an end only when the stronger union finally succeeded in crushing the weaker. In controversies of labor organizations which are diametrically opposed in principle, amalgamation is, of course, out of the question. For instance, the Knights of Labor was really a dual organization with respect to practically all trades; and the only possible solution of the difficulty was to oust the Knights from those trades. In the Industrial Workers of the World the unions affiliated with the Federation also recognized a dual union, and in their eyes the obvious remedy was simply to wipe the I. W. W. off the union map.

The C.I.O. was a dual or rival union, and the obvious solution to the leaders of the A. F. of L. was to eliminate it. This the Federation has failed to do, and since 1935 severe jurisdictional disputes have existed between A. F. of L. and C.I.O. unions.

Some important dual-union controversies have arisen out of a split in the ranks of an existing union. Of these the most significant example was the controversy between the United Garment Workers' Union and the Amalgamated Clothing Workers' Union. When the split occurred, the Federation simply held to its policy, i.e., refused to recognize the "outlaw" union and fought it at every turn. In 1933 the Federation readmitted the Amalgamated, the dual union, the Amalgamated by then being much more powerful than its parent. In 1935, however, the Amalgamated went out again with the C.I.O., while the United remained in the A. F. of L. At the present time the A. F. of L. and the C.I.O. both have unions in many of the same fields. By jurisdictional disputes each struggles for mastery.

#### TRADE JURISDICTION

Jurisdictional disputes are not a phenomenon connected only with opposing types of structure. Some of the most bitter controversies have been carried on within the A. F. of L. by two or more trade unions. At first glance the problem looks simple enough. Let the carpenters have jurisdiction over all carpentry work, the electricians over all electrical work, and the plumbers over all plumbing work. Once the lines are definitely drawn

there should be no further annoyance. Nor would there be if industry remained static, but this is precisely what industry does not do. New machines and new methods of production are perpetually depriving the craftsman of work that was formerly his. He clutches it tightly, but one by one his fingers are pried loose and eventually he has to yield. Hence, as changes have taken place in industry the unions have had to modify, extend, and make more detailed their jurisdictional claims. Collisions were inevitable.

Peculiarly susceptible to this kind of dispute has been the building industry, which almost from the time it was organized has been racked with jurisdictional conflicts. This has been presented in such a vivid manner by Mr. N. R. Whitney that it is worth while to quote him at some length. He assumes that a modern office building is being constructed. "The work of excavation, requiring mainly unskilled labor, is claimed by the Hod Carriers' and Building Laborers' Union, and except where the excavation is so deep that a hoisting engine or other machine is needed to bring up the dirt, it may be regarded as conceded to this union. If the foundation walls are built of stone, they will be claimed by the stonemasons, who are a part of the Bricklayers' and Masons' Union, since the jurisdiction claimed by this union covers the setting of all stone. If the foundation had been of brick, the work would have been controlled by the same national union. If the foundation had been of concrete, the Cement Workers would have laid claim to the work, while the Bricklayers and Masons would also have been likely to demand control of it, on the ground that the concrete was being used as a substitute for brick or stone.

"The framework of the building, being of structural steel and iron, will be conceded to the Bridge and Structural Iron Workers' Union. For the outside walls, if granite be used, the stone must be cut by the Granite Cutters, who have exclusive jurisdiction over the cutting of that material. If a sandstone or any stone softer than granite is used, the Journeymen Stone Cutters' Association will control the cutting, though this may be contested in some cases by the stonemasons, who claim that very often it is necessary or at least expedient, for them to cut stone in connection with setting it. On the other hand, the Stone Cutters may claim the placing of the stone in the wall on the score that the setting of stone is a branch of the stone cutter's art, but generally stone setting is yielded to the masons.

"The roof, if made of composition, slag, or other roofing material such as asphalt and gravel, will be built under the control of the Composition Roofers, who have jurisdiction over the placing of this roofing material; if the roof is of slate or tile, it is conceded to the Slate and Tile Roofers. The



floors are likely to be of re-enforced concrete. In that case the Carpenters will claim the building of all moulds and forms; the mixing and handling of the concrete will be demanded by both the Cement Workers and the Hod Carriers, while the Bricklayers will contend that such work ought to be done under the direction of a bricklayer foreman. Finally, the metal sheathing which forms the basis for the concrete is claimed by both the Lathers and by the Sheet Metal Workers. If the floors are made of wood, they will be conceded to the Carpenters as their work. The lathing of the building will be done by the Wood, Wire and Metal Lathers, though on one side this work approaches closely the trade line of the carpenter, and on the other that of the sheet metal worker.

"The painting and decorating of the building will be claimed by the Painters, although the putting up of picture molding is demanded by the Carpenters on the ground that the material is wood and is attached by the use of carpenters' tools. The placing of the hollow metal doors and sash throughout the building will be considered by the Carpenters as belonging to their trade because this work requires the use of their tools and their skill and because the use of sheet metal is displacing what was formerly carpenters' work, while the Sheet Metal Workers regard this as part of their trade, inasmuch as they manufacture this material and do nothing but handle sheet metal, so that they have the skill necessary to erect it. Plumbing, heating, and lighting are trades not very difficult to distinguish, but if a vacuum cleaning system, a sprinkler system, or some other extension of one of these older trades is to be installed, difficulties arise. The Steam Fitters maintain that custom ought to be a guide, that is, that it should be ascertained which trade group was originally regarded as the most competent to do the work as evidenced by the choice of the builder. The Plumbers would also claim this work on the ground that they have men in their organization who practice these trades, and that the whole pipe-fitting industry ought to be united under their jurisdiction, but this complication arises out of the existence of dual associations, and is not due to uncertain trade lines.

"The construction of the elevators will be claimed in its entirety by the Elevator Constructors, but this demand will be opposed for different parts of the work by the Electrical Workers, the Sheet Metal Workers, the Machinists, the Structural Iron Workers, and the Carpenters, each of these unions claiming such part of the work as it regards as lying within its trade. The Elevator Constructors maintain that the whole work is so closely connected that it cannot be conveniently or properly performed in parts by different trades. The plastering of the building will be conceded to the Plas-

terers, since the work of applying plastic material to walls is pretty well defined. However, if certain forms of decorative plaster, which are made up in factories and cast in sections all ready to be nailed to the wall, are used, the Plasterers will still insist on the control of the work because the use of this material is displacing the older form of plaster, and the Carpenters will demand it on the ground that to nail these blocks to the wall is essentially their work since it is performed with their tools. The interior marble work for stairs, mantels, fireplaces, and columns will be done under the jurisdiction of the Marble Workers, who have control of the cutting and setting of interior marble work, whereas if the same material were used on the outside of the building the Stone Cutters and the Masons would have control. The erection of the scaffolding used in various stages of the construction of the building will be claimed by the Hod Carriers and Building Laborers on the ground that it requires little skill and is therefore to be classed as laborers' work; by the Carpenters, because carpenters' tools are used; and, when scaffolding is to be used by the Marble Workers, by the Marble Workers' Helpers on the ground that the erection of the scaffolding is closely associated with the placing of the marble."<sup>3</sup>

If it were possible to devise some satisfactory test whereby jurisdictional boundaries could be automatically determined, a great deal of the difficulty would be removed. But there is as much chance for argument over what the test is to be as over the jurisdiction itself, in other words, the chance is unlimited.

Anyway, the unions shift tests with amazing facility to fit the needs of the immediate situation. For example, in 1907 the carpenters' union claimed jurisdiction over all 'journeymen carpenters and joiners . . . whether employed on the building or in the preparation and manufacture of the material for the same.' Here the kind of material seems to be the determining factor. In 1937 we find them claiming jurisdiction over all kinds of work "where the skill, knowledge and training of a carpenter are required, either through the operation of machine or hand tools."<sup>4</sup> At another time it was declared that "every man employed in the woodworking industry—handling edged tools—ought to belong to the United Brotherhood of Carpenters and Joiners of America."<sup>5</sup> The president of the union claims that, because the carpenter trade "is one of the most general and complete trades a man can learn,"<sup>6</sup> the carpenters should have jurisdiction

<sup>3</sup> N. R. Whitney, *Jurisdiction in American Building-Trades Unions* (Johns Hopkins Press, 1914), pp. 51-55.

<sup>4</sup> United Brotherhood of Carpenters and Joiners, *Constitution, 1937*, sec. 7.

<sup>5</sup> United Brotherhood of Carpenters and Joiners, *Proceedings, 1904*, p. 45.

<sup>6</sup> *Ibid.*, 1910, p. 67.

over certain kinds of work. We find still a different test in use in an agreement between the carpenters and the bridge and structural iron workers: "The Bridge and Structural Iron Workers claim the erection of all necessary false work, and as this is only of a temporary nature and refers more particularly to the erection and construction of steel and iron bridges, it was conceded that this comes properly under the jurisdiction of the iron workers."<sup>7</sup> Because the work is "temporary" and merely preliminary to the permanent work, the carpenters concede it to the iron workers.

About the only consistency which the carpenters' union can be accused of having is that throughout its history it has looked at jurisdictional questions from the standpoint of the welfare of its own members. As long as this remains the test in most general favor with the unions, peace will continue to be conspicuous by its absence.

The International Teamsters Union and the Brewery Workers recently carried on a jurisdictional fight which lasted for years and cost each of the unions and the A. F. of L. itself thousands of dollars. The dispute arose over which of the unions should include the truck drivers who distribute beer. The Brewery Workers Union held that they had organized the drivers, had always had them in their union, and accused the Teamsters Union of pirating members. The I.T.U. maintained that these truck drivers simply drove from one place to another and never saw the inside of a brewery.

The case was heard at A. F. of L. conventions in Washington and San Francisco and the decision was made in favor of the Teamsters. The Brewery Workers did not comply. In 1939 at the Cincinnati convention the Executive Council recommended that the charter of the Brewery Workers be suspended until that union conformed to the earlier decision. Before the A. F. of L. could have their charter suspended, however, the Brewery Workers secured an injunction restraining the officers of the Federation from taking such action. Later the injunction was made permanent, and the A. F. of L. could not act until it had carried its case to the Court of Appeals where, after months, the injunction was invalidated. Again, before the A. F. of L. had taken its now legalized action the Brewery Workers appealed to the Supreme Court of the United States which finally, however, refused to review the decision of the lower court.<sup>8</sup> At long last, the 1941 Convention voted to adopt the recommendation which the Executive Council had made in 1939.<sup>9</sup>

<sup>7</sup> *Ibid.*, 1908, p. 211

<sup>8</sup> *Green V. Obergfell*, 314 U. S. 637 (1941).

<sup>9</sup> American Federation of Labor, *Proceedings*, 1941, pp. 631-647.

## THE COST OF JURISDICTIONAL DISPUTES

The cost of jurisdictional disputes is one of the heaviest borne by the trade-union movement, and when it is realized that no great benefit results, the burden begins to seem excessive. It is obvious that the participating unions themselves suffer grievously. It is impossible to estimate with any degree of accuracy the large expenditure of money involved. This includes a number of different items. There are the losses from wages, the strike benefits that may have to be paid during a jurisdictional strike, and the cost of maintaining the organization or even rebuilding it should the struggle prove disastrous. According to Mr. Whitney "the amount of money spent by the building trades unions upon jurisdictional controversies, directly and indirectly, represents one of the largest items in their budgets."<sup>10</sup> The union is forced also to pay a big price in the form of the bitter hostility aroused in its fellow-unions, not only those directly engaged in the disputes, but others which feel that it is in the wrong.

A union has also to pay heavily in the form of increased hostility on the part of the employers and heightened distrust on the part of the public. Employers already embittered against the union have made good use of jurisdictional disputes as ammunition in their fight to discredit it, and many friendly employers have undoubtedly been estranged. An employer has a contract to fulfill. He is paying the union rate of wages, working union hours, and employing only union men, and everything seems to be satisfactory. Suddenly a jurisdictional dispute arises between two of the trades involved and just as suddenly, through no fault of his own, he finds himself unable to fulfill his contract. Is it strange that his friendliness toward the union turns to disgust, or even to open hostility? The public finds it difficult to understand why the men go out on strike when the employer is meeting the union demands concerning wages, hours, and the exclusion of non-union men. During the dispute between the United Brotherhood of Carpenters and Joiners and the Amalgamated Wood Workers, employers meeting all these demands were placed on the unfair list when they employed members of the opposing union.

That the trade-union movement as a whole has suffered goes without question. The disputes lead to controversies among the unions that are at times far more bitter than their controversies with the employers. Of the quarrel between the United Brotherhood of Carpenters and the Amalgamated Wood Workers in New York City one trade-union leader said, "The

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<sup>10</sup> N. R. Whitney, *Jurisdiction in American Building-Trades Unions* (Johns Hopkins Press, 1914), p. 126.

unfortunate struggles in the Borough of Manhattan and Kings . . . amounted almost to a calamity, and it will take years to eradicate the disastrous results."<sup>11</sup> The same dispute carried into Denver caused President Kirby of the Building Trades Department to say, "The result of the fight has been the almost complete disorganization of one of the best organized cities in the United States, and a condition created that has held us up to ridicule throughout the country."<sup>12</sup> Another example is furnished by the city of Chicago. The Steam Fitters' Union having been suspended by the Building Trades Department, the local council attempted to have the plumbers establish a local branch of steamfitters. The different unions immediately took sides, and the war began. The result was that it became practically impossible to get any work done. If an employer hired members of the Steam Fitters' Union, the hostile organizations would refuse to work, and if he employed plumbers, the friendly ones would quit. Animosities reached such a pitch that the rival factions openly accused each other of hiring thugs. Three of the most prominent members of the plumbers' union were at one time under arrest on the charge of conspiracy to kill.

The effect of jurisdictional disputes upon public opinion must also be taken into account. The general public do not confine their indignation to the unions immediately engaged in a dispute, but are quite apt to condemn the entire union movement indiscriminately. They can scarcely be blamed when they are called upon to pay such a heavy price. This they do largely in the form of building delays and increased costs. "Building construction was continually interrupted," says Professor Commons in speaking of jurisdictional disputes in New York, "not on account of lockouts, low wages, or even employment of non-union men, but on account of fights between the unions. The friendly employer who hired only union men, along with the unfriendly employer, was used as a club to beat the opposing union."<sup>13</sup>

Not infrequently the employer has been forced to employ two groups of workmen, one from each of the disputing unions. While one group worked, the other sat watching, each group being paid the usual wage scale for the time consumed. Building delays, a retarding of the installation of new and improved methods, and other results of jurisdictional strife are undoubtedly responsible for the loss of thousands of dollars annually. Ultimately this cost devolves upon the public. The cost, too, of the unemploy-

<sup>11</sup> United Brotherhood of Carpenters and Joiners, *Proceedings*, 1904, p. 209.

<sup>12</sup> Buildings Trades Department, *Proceedings*, 1909, pp. 11, 33.

<sup>13</sup> J. R. Commons, "The New York Building Trades," *Quarterly Journal of Economics*, 18:412 (May, 1904).

ment and the generally disorganized condition of the industry affected is not borne entirely by the unionist himself. It constitutes a great social loss.

Sidney and Beatrice Webb call attention to the petty nature of some of the rulings which give rise to these disputes, such as the shipwrights' granting to the joiners the right to "case all telegraph connections throughout the ship, except only when they happen to go through cargo spaces, coal bunkers, and the hold. When a joiner passes this magic line in a job of a few hours, the whole of the shipwrights will drop their tools. . . . These trivial disputes sometimes blaze up into wars of the first magnitude."<sup>14</sup> When they do thus blaze up, the public as a whole gets singed along with the immediate participants. In speaking of the trouble between the joiners and the shipwrights the Webbs report that "within the space of thirty-five months, there were no fewer than thirty-five weeks in which one or other of the four most important sections of workmen in the staple industry of the district absolutely refused to work. This meant the stoppage of huge establishments, the compulsory idleness of tens of thousands of other artisans and laborers, the selling-up of households, and the semi-starvation of thousands of families totally unconcerned with the dispute. Nor was the effect confined, as far as the Trade Unionists were concerned, to these sensational but temporary results. . . . The internecine warfare on the Tyne has left all unions concerned in a state of local weakness from which they have by no means yet recovered, and under which they will probably suffer for many years. . . . Thus, whilst these demarcation disputes cause, to the employers, the wage earners, and the community at large, all the moral irritation and pecuniary loss of an ordinary strike or lockout, they must, under all circumstances, weaken all the unions concerned in their struggle for better conditions."<sup>15</sup>

#### PROPOSED REMEDIES FOR JURISDICTIONAL DISPUTES

How to eliminate jurisdictional disputes is an important problem to society—more important, probably, than society realizes—and to labor itself a pressing one indeed. If labor organization is to reach anything like its full efficacy as a means of furthering the common interest of the wage earners, some means of settling jurisdictional controversies must be devised. One mode of settlement after another has been tried and found wanting. Frequently the stronger union has simply dictated its claims to the weaker,

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<sup>14</sup> Sidney and Beatrice Webb, *Industrial Democracy* (Longmans, 1920), pp. 509-510.

<sup>15</sup> *Ibid.*, pp. 513-514.

relying for enforcement upon its own strong right arm. This method has at least the merit of sometimes settling disputes so thoroughly that they stay settled; but until might invariably coincides with right, it can hardly be accepted as final and unimprovable. The conference, which has been in general use for many years and which has oftentimes proved exceedingly helpful, lacks coercive power and is therefore incapable of compelling an agreement or enforcing an agreement once made. Arbitration shares this fatal weakness besides having several defects of its own. The unions must first agree to arbitrate, not always an easy thing to arrange, and then they are faced with the still harder task of choosing an arbitrator. These obstacles having been painfully surmounted, one or the other of the unions will very likely refuse to abide by the decision, comfortably aware that nothing at all can be done about it. Certainly none of these methods affords any general solution to the problem of jurisdictional disputes.

It was with the intention of providing some such general solution to jurisdictional warfare among the building-trades unions that the Structural Building Trades Alliance was organized in 1904. A rule was adopted which permitted "organizations having jurisdictional disputes with those now affiliated to be admitted, provided said applicants agree to submit their disputes and abide by the decisions rendered by the Alliance." When, in 1908, the Alliance was succeeded by the Building Trades Department of the A. F. of L., Secretary Spencer said, "The dream of every officer who has ever carried the responsibility of directing affairs of an international union has been the establishment of some medium for the adjustment of disputes between trades whose jurisdiction conflicts as the modernizing of building erection advances. The Building Trades Department has been assigned to fill the bill, becoming the clearing house, so to speak, for the adjustment of all trade disputes."

Unfortunately for all concerned—and all are concerned—the dream of every labor official did not come true in the shape of the Building Trades Department, nor has it since come true in any shape whatever. Nevertheless one of the attempts to make it come true seems to deserve rather extended treatment because of the effort involved and because it so well exemplifies prevailing trade philosophy.

On August 11, 1919, there was organized the National Board for Jurisdictional Awards in the Building Industry. Three of the eight members were selected by the Building Trades Department and one each by the architects, the engineers, the contractors, the building exchanges, and the employers. The duties of the Board were to hear jurisdictional claims and

to make awards in accordance with the facts submitted by the contenders. Any local that refused to comply with its decisions was to be suspended from the national organization. A number of disputes were ready and waiting for operations to begin, and on March 11, 1920, the Board handed down its first group of decisions. A second group was rendered on April 28, and a third on August 2. Among the decisions rendered on December 4 of the same year was one which proved to have momentous consequences for the Board itself.

For many years the Sheet Metal Workers' Union and the United Brotherhood of Carpenters and Joiners have been engaged in one of the bitterest fights in trade-union history. The trouble began with the introduction of metal trim. The carpenters claimed the new kind of work on the ground that the erection of metal cornices required the same kind of skill as the erection of wooden ones, the metal simply replacing the woodwork; and on the further ground that carpenters' tools were used. The sheet-metal workers based their claims upon the fact that the material was that over which they had always claimed jurisdiction.

All efforts to settle the dispute were in vain. At one time both unions agreed to submit their claims to Judge William J. Gaynor of New York. On April 23, 1909, Judge Gaynor awarded the work to the carpenters, whereupon the sheet-metal workers refused to accept his decision and the trouble continued. At its 1909 convention the Building Trades Department reviewed the case and reversed the Gaynor decision, whereupon the carpenters refused to abide by the Department's decision and were therefore suspended—only to be reinstated in 1911. Since the reinstatement signified nothing as to the merits of the case, but only that the Department wanted the carpenters back again, it failed to settle anything at all. In 1912 the Department reiterated its decision of 1909 and demanded that the carpenters live up to it. The carpenters soon withdrew from the Department, but at the instigation of the A. F. of L. were readmitted over strong opposition. In 1915, after a heated discussion, the Department reversed its stand and awarded the metal-trim work to the carpenters, thus complicating further a dispute which was already sufficiently involved.

It was a case loaded with dynamite which the sheet-metal workers laid before the Board of Awards. The Board tackled it and on December 4 gave its decision awarding the metal-trim work to the sheet-metal workers. Once again conditions were reversed, and with characteristic single-mindedness the carpenters withdrew from further participation in the activities of the Board of Awards. The carpenters were then suspended from the De-



partment. Repeated attempts failed to effect an adjustment. Matters had reached an impasse: the Board of Awards maintained that it could not grant a rehearing until the carpenters had reaffiliated with the Department and the carpenters declined to reaffiliate until that body had severed all connection with the Board.

The Board continued to function with a reasonable degree of success. Important disputes were submitted and decisions rendered. Then on the morning of December 30, 1927, the carpenters were readmitted to the Building Trades Department and on the afternoon of the same day the Department withdrew from the Board of Awards. Despite protestations to the contrary on the part of Building Trades Department officials it seems clear that the Board's collapse was a direct consequence of the uncompromising stand of the carpenters.

Another attempt to work out a program for the settling of jurisdictional disputes was made in 1930 when the Building Trades Department and the National Association of Building Trades Employers entered into an agreement which provided for the formation of boards of trade claims. The bricklayers, having withdrawn from the Department in 1927, the carpenters in 1929, and the electrical workers in 1930, did not cooperate in this enterprise and consequently the boards were seriously handicapped.

The construction code under the N. I. R. A. provided for the establishment of a National Planning and Adjustment Board which was authorized to make provision for the settling of jurisdictional disputes. The plan finally worked out called for a committee for temporary adjudication and a board for final determination. The committee was composed of the president of the Building Trades Department and the chairman of the National Planning and Adjustment Board, and in case of failure to agree these two were to select a third member. The rulings of this committee were to be binding until a final decision was rendered by the National Jurisdictional Awards Board, composed of three impartial persons.

At the 1934 convention of the Department a dispute arose concerning the reaffiliation of the "triple alliance"—the bricklayers, the carpenters, and the electrical workers. The Department charged that the "triple alliance" wanted to reaffiliate in order to obtain control of the employee representative on the important jurisdiction committee. The Federation at its 1934 convention, however, ruled that the three unions had complied with all the regulations of the Department and ordered it to readmit them. This the Department refused to do. The executive council was directed to call a conference of building trades organizations, at which the whole Department was reorganized around the three formerly dis-

senting unions—the bricklayers, carpenters, and electrical workers. Twelve of the former member unions refused to support the new department, and litigation resulted in a court declaration called for June, 1935, at which the conference was “reorganized” with the same members and officers, the twelve unions continuing aloof. At the 1935 convention the delegate of the new department was refused a seat by convention vote. After a series of conferences, it was agreed to refer the matter to a committee of three from each side, which ordered another convention at which all building trades unions were present. The Department included a new provision providing for the appointment of a referee to determine jurisdictional disputes.<sup>16</sup> Plans were made to settle disputes immediately by local arbitration boards, whose decisions are binding pending review by the referee.<sup>17</sup>

Other remedies, such as an exchange of cards between the contesting unions and the requirements that men doing disputed work belong to both unions, have been suggested but have not come into extensive use. In claiming jurisdiction over a particular kind of work, a union is asserting what it considers to be its right to secure jobs for its members. Since unions very rarely have plenty of work for all their members, each union is determined to protect its members' jobs by maintaining or extending its jurisdiction. When a new material or process is introduced, members of the union believe, and perhaps rightly so, that unless jurisdiction is maintained, there will be less work to go around. A jurisdictional dispute is really, therefore, a struggle for jobs for the members—it is a matter of such vital interest to the union members that compromise is nearly impossible and the proposal for an exchange of cards between union members to avoid jurisdictional struggle overlooks completely the fundamental cause: job control for each union. If exchange of cards is introduced, each union loses its exclusive job control. Another aspect of the disputes between unions centers of course around the collection of dues and the necessary jobs for the leaders.

The C.I.O. Auto Workers and the A. F. of L. Building and Construction Trades Department in several automobile plants in Detroit recently avoided what had threatened to be a serious jurisdictional dispute. The building trades union had warned the C.I.O. workers that only the A. F. of L. members were allowed to install equipment and do construction work. Maintenance workers in the C.I.O. did not agree. Through the efforts of the assistant secretary of labor, a dispute was averted and a

<sup>16</sup> *Monthly Labor Review*, 44; 293-295 (Feb., 1937).

<sup>17</sup> *Monthly Labor Review*, 44; 1209-1210 (May, 1937).

plan was made for settling this and future disagreements. Briefly, the plan provided for a local joint committee, which would be the first to try to reach an agreement, and a national committee with an impartial chairman whose decision would be final and binding on both parties. The national committee will decide any disputes which the local committee cannot settle.<sup>18</sup> Although this plan is tentative and will undoubtedly not prevent all jurisdictional disputes in this industry, the very fact that the two parties agreed to come together in conference to discuss jurisdictional differences is quite significant.

The employers have a remedy for jurisdictional disputes which to them seems just the thing. Simply permit the employer to select the men who can do the work best. He is the man best qualified to judge the quality of the work, he is the man most interested in having the job well done, and consequently he can be depended upon to make a wise choice. If told that this would break down trade lines, he would probably ask what was the difference if it did. What are trade lines to him? Even the information that they are the very life-blood of trade unionism might fail to impress him. But the unions have only too vivid an impression of what will happen if these lines are broken down. The employer will be tempted—nay, in a competitive society, compelled—to hire the men who will work the longest hours for the lowest wages and who will in other ways make the least demands upon him.

The Webbs proposed a solution which obviates this difficulty. "What each Trade Union asks is that the recognized Standard Rate for the particular work in question shall be maintained and defended against possible encroachment. If the same conception were extended to the whole group of allied trades, any employer might be left free, within the wide circle of federated unions, to employ whichever man he pleased on the disputed process, so long as he paid him the Standard Rate agreed upon for the particular task. The federated Trade Unions, instead of vainly trying to settle to which trade a task rightfully belongs, should, in fact, confine themselves to determining, in consultation with the associated employers, *at what rate it should be paid for.*"<sup>19</sup>

Exception may be taken even to this proposal. Maintenance of the standard rate is of course to the advantage of the disputing unions, but it is harder for two unions to maintain the standard rate than for one. Further-

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<sup>18</sup> Bureau of National Affairs, *Daily Report on Labor Problems, Manpower Control, Wage and Salary Regulations*, June 29, 1945, p. A12.

<sup>19</sup> Sidney and Beatrice Webb, *Industrial Democracy* (Longmans, 1920), pp. 523-524.

more, even granting that the rate is maintained, the fact is not altered that if the sheet-metal workers obtain the metal work which has taken the place of woodwork, there is that much less work for the carpenters; and the number of carpenters remaining the same, unemployment for carpenters will result to the extent to which the work has been decreased. Hence it is to the interest of the carpenter to obtain jurisdiction over work that has displaced carpenter work; and to the extent that he obtains such work, to that extent has he gained something for himself. This is the fundamental purpose of the carpenters' union or any union—to further the interests of its own members.

It is apparent that jurisdictional disputes present a knotty problem, which so far has withstood all efforts at disentanglement. So long as industry continues to develop, questions will continue to arise with regard to distribution of the new work. Among those who advocate the organization of labor on industrial lines, one of the chief criticisms of craft unionism is that it makes inevitable these disputes over the complex questions of trade jurisdiction, but while it may be argued that jurisdictional disputes will be reduced by industrial unionism, nevertheless, it is clear that industrial unions also overlap and may engage in jurisdictional disputes. It is widely recognized that the dispute between the two types of unionism leads to jurisdictional disputes, but in 1936 only .1 per cent of the total number of strikes was the result of rival unionism. In 1937 only 2.6 per cent of the strikes and 2.1 per cent of the workers involved in strikes were the result of rival union disputes. These, moreover, were the years of rapid extension of both the A. F. of L. and C.I.O.<sup>20</sup> By 1940, 3.1 per cent of the strikes and 1.4 per cent of the workers involved started with jurisdictional disputes<sup>21</sup> and for 1941 comparable figures were 2.2 and 1.6 per cent, respectively.<sup>22</sup> One and four tenths per cent of the total number of strikes and lockouts ending in 1944, .8 per cent of the workers involved, and .6 per cent of total number of man-days idle, were caused by jurisdictional disputes. The Bureau of Labor Statistics does say that many local jurisdictional strikes are not reported to them, but it is obvious that such disputes, being manifestly unfair, have received undue publicity considering their minor importance.

The labor movement is justly condemned for permitting jurisdictional and rival union disputes to continue, but the solution is not so easily discovered as the critics imply. What is generally overlooked is

<sup>20</sup> *Monthly Labor Review*, 44:1230 (May 1937); 46; 1200, (May 1938).

<sup>21</sup> *Ibid.*, 52:1109 (May 1941).

<sup>22</sup> *Ibid.*, 53; 1125 (May 1942).

that the union which surrenders in a jurisdictional dispute may in normal times be condemning its members to unemployment, and this is particularly true during a depression. Although the jurisdictional disputes should, therefore, become practically nonexistent in time of full employment such as during the war effort, the labor movement should not be condemned for not suddenly giving up its beliefs, so as to correct union policies. Perhaps the only real solution to the problem of jurisdictional disputes will be the guaranteeing of work for all by maintaining full employment in normal times as well as in crises.

## CHAPTER VIII

### ECONOMIC PROGRAM OF ORGANIZED LABOR

#### COLLECTIVE BARGAINING

THE workers' chief motive in organizing is to put themselves in a position where they can force the employers to bargain with them as a group instead of as individuals. When an employee is not a member of a labor organization, he has to accept or refuse the contract offered him by the employer without consulting his fellow employees. This is called individual bargaining. In trades which are organized, however, it is generally the practice for the entire group to bargain as a unit. The method varies, but usually the employees elect representatives who confer with the employer concerning the terms of the contract for the group until they reach an agreement. If the representatives have been given power to bind their fellow employees, the agreement is final. Sometimes it is tentative and must be submitted to the group for approval. In either case the process is known as collective bargaining.

It is obvious that collective bargaining may exist on either a small scale or a large scale. It may take place in a single plant or it may cover a group of plants. It may be undertaken by a formal, permanent organization or by a group temporarily tied together by the exigencies of a particular situation; but in the absence of continuous organization, it is apt to be ineffective, because one very important element in bargaining power is the ability to enforce agreements after they have been made. Trade unions insist, in an argument which will later be considered in greater detail, that collective bargaining cannot be effective if the bargainers are limited to one plant. As a matter of fact, they hold that such bargaining is not "collective bargaining."

The First Industrial Conference called by President Wilson broke up largely because of its inability to reach an agreement as to the meaning of this term.<sup>1</sup> Since the passage of the National Labor Relations Act in 1935, however, the meaning has been more definitely stated and interpreted by the Labor Board created by that act. Nevertheless dispute over the enforcement of the labor act indicates that there is still no unanimity

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<sup>1</sup> First Industrial Conference, *Proceedings*, 1920, p. 241.

of opinion as to the meaning of this cornerstone of labor's economic program. The Webbs take essentially the union position: "But though Collective Bargaining prevails over a much larger area than Trade Unionism, it is the Trade Union alone which can provide the machinery for any but its most casual and limited application."<sup>2</sup>

The laborer has substituted collective bargaining for individual bargaining because individual bargaining is so ineffective. It is true that the individual laborer is bargaining with the individual employer, but the employer has the advantage. To him one laborer more or less is a matter of no great concern particularly when trade is not brisk; and even when it is, he can give up a single employee without any serious inconvenience. To bargain effectively, the bargainer must have something that the other party greatly desires, and must at the same time have no great desire for the other party's commodity. This, except in most unusual circumstances, is not the laborer's position; whereas the employer has something that the laborer wants very much indeed, namely a job, and seldom needs very badly the services of that particular laborer. He can even manage to get along without the services of all of his employees for a period. But the worker has no such alternative. He must have a job or starve. The employer knows this and so he is usually able almost to dictate the terms of the bargain, which naturally will not be formulated primarily to please the employee. It is to reduce this great unevenness of the situation, to place themselves on a footing more nearly equal to that of the employer, that the employees use collective bargaining. Functioning as a unit they do possess something which the employer greatly desires. He may not care whether an individual laborer works for him or not, but he does care if the entire group withdraws from his plant in a body.

The individual job-seeker is usually ignorant of general market conditions and perhaps also of the customary rate of wages in his special line of work. Even after he gets a job—assuming that he does—he is not much better off in this regard. He is still practically at the employer's mercy as long as others stand ready to take his place. Even when he combines with his fellows in the plant to bargain collectively, his position, although improved, is still threatened by an ignorance which the whole group are apt to share and which the employer can turn to his own advantage. To know conditions in their own plant is not enough, and what chance have they to learn about general market conditions? Their time and their energies are absorbed by their work. Those who act as representatives are volunteers and like the rest are otherwise engaged in acquainting themselves with gen-

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<sup>2</sup> Sidney and Beatrice Webb, *Industrial Democracy* (Longmans, 1920), pp. 178-179.

eral market conditions. What is perhaps more serious, they receive their wages from the employer with whom they bargain. This means that any who become adept at bargaining are likely to incur his ill-will and to lose their jobs or at least be made the victims of unpleasant discrimination. Anyway these unpaid representatives are at a great disadvantage in driving a bargain. The employer is an experienced and expert negotiator. That is his profession. He knows wage rates in general, he knows the state of the market for the commodity his plant is producing, and he knows the technique of bargaining. Beside him the employees' volunteer representative is a pitiful amateur.

The trade union remedies some of these weaknesses of plant bargaining. Since the representatives receive their pay from the union, they have nothing to fear at the hands of the employer and so are able to meet him at the conference table on less uneven terms. Directly or indirectly they give most, perhaps all, of their time to the business of bargaining, familiarizing themselves with conditions not in one plant alone but in all plants, learning wage rates in general, and becoming in the only possible way—through experience—expert negotiators. Thus we see that the Webbs and others who insist upon the indispensability of trade-union organization to collective bargaining do not exaggerate its importance. And just as the trade union is essential to successful collective bargaining, so collective bargaining is essential to the trade union; unless like the I. W. W., it seeks primarily an immediate overthrow of the existing economic system.

#### THE TRADE AGREEMENT

We have seen that if the wage earners are to bargain collectively and do it well, they must be organized into some kind of union. To the union members it also seems necessary that their organization be recognized. Sometimes the employers, as for so many years in the anthracite coal district, will simply pretend that the union does not exist and will bargain with elected representatives of their men. Of course this is only a subterfuge, as in so doing they are, for all practical purposes, recognizing the union. But the unionist wants out-and-out recognition, and recognition is always among the first of his demands. Recognition signifies merely that the employer voluntarily meets the union's representatives to discuss terms of employment for the entire group in order to arrive at some sort of working agreement. Many of the employers have come to see the need for recognizing the unions and even, in many instances, have discovered advantages to themselves in dealing with them. The Webbs reported in 1897 that "some-



thing like 90 per cent of the skilled workmen in England found either their rate of wages or their hours of work, and frequently many other details, predetermined by collective bargaining in which they had taken no part personally but which had been conducted on their behalf by representatives of their class.

Collective bargaining, when carried on in a businesslike manner by duly elected representatives of a union that has been recognized by the employers, usually results in some kind of agreement. This agreement, called the trade agreement or the collective bargaining contract, has become an exceedingly important part of the trade-union program. Some of the essential features of the more important types of the trade agreement may well be described.

We have noted that it was during the nineties that this device first gained prominence in the trade-union program, the same decade in which trade unionism won a decisive victory over politics. One of the earliest stable trade agreements was entered into by the Chicago bricklayers in 1887, and the iron and steel industry had worked under a national trade agreement as early as 1866. The agreement had also been used to some extent before 1890 in several other industries. A most important forward step was taken in 1891 when the national system was established in the stove-foundry industry. The National Association of Stove Manufacturers had been organized in 1872, and the product had been standardized and reduced to a piece-work basis. Conditions were favorable to a trade agreement, but a series of strikes and lockouts had stretched over a period of years before one was finally established. In August, 1890, a strike in Pittsburgh was settled by a written trade agreement with the local union, and on March 25, 1891, a conference took place between representatives of the union and of the employers and a complete plan of organization was worked out for the stove-molding industry.

The plan called for an annual meeting of two committees of three members each, chosen respectively by the union and by the employers. This conference adopted a general wage scale for the industry. When it becomes clear that a dispute cannot be settled locally, the matter is referred to the presidents of the two organizations; and if they cannot agree, it is referred to the joint conference committee for final settlement. The parties to the dispute are forbidden to engage in hostilities while the matter is in the hands of the constituted authorities. Each organization agrees to enforce the terms of the agreement. The plan was endorsed almost unanimously and has operated successfully ever since.

Another industry that has had success with the trade agreement is the glass-bottle industry. Each year there are two conferences between the executive boards of the two organizations. There is a preliminary conference in May of each year to consider all questions relating to prices and rules which have not been settled to the satisfaction of both parties during the year. The conference also considers any provisions of the agreement which either of the two parties thinks should be amended. An interesting feature of these conferences is that the representatives of the union are empowered to enter into an agreement finally without ratification by the members of the union. The union representatives go into the conference uninstructed, though naturally they do not entirely ignore the wishes of their constituency. A second conference is held in the late summer to make final settlements. If no agreement can be reached, it is customary to continue under the terms of the old agreement.

A great many national agreements provide only the machinery for the settlement of disputes, granting to the local unions the power to enter into agreements fixing wage rates, rules, and conditions of work; but the national agreement in the glass-bottle industry is quite detailed, fixing practically all of the conditions of employment and limiting the power of the local unions to matters of their internal government. If a question arises during the year that has not been answered by the national conference, an attempt is first made to settle the matter in a conference between the employer and the factory committee of workmen from the shop concerned, chosen by the employees in that shop. If this conference cannot settle the question, it is referred to the president of the union, the next joint conference having the power of review.

In 1900 the American Newspaper Publishers' Association and the International Typographical Union entered into an agreement for a period of one year. This proved so satisfactory that it was renewed for a year and thereafter for five years at a stretch, with changes from time to time in matters of detail. Both local boards and national boards were provided for purposes of arbitration. If the local boards, composed of two members from each group, could not arrive at an agreement, the president of the union and the chairman of the special committee of the publishers' association chose a fifth member who was expected to try to bring the original four members to an agreement. Appeal might be made by either side to the national arbitration board.

The story of the part which the trade agreement has played in the coal industry is one of the most absorbing in all trade-union history. A beginning was made in 1886 when the coal operators and the bituminous section of the

union entered into a collective agreement which was practically limited to Ohio. Even that limited agreement was abandoned in 1890. In 1897 a spectacular strike resulting in a victory for the miners led among other things to the establishment of the joint interstate conference as a fundamental part of the collective bargaining between the bituminous operators and the miners. The first effective interstate conference was held in January, 1898.

Writing in 1901 Professor Commons spoke thus of the advantages of the machinery for collective bargaining: "This annual interstate conference of the bituminous coal industry is the most picturesque and inspiring event in the modern world of business. Here is an industry where, for many years, industrial war was chronic, bloodshed frequent, distrust, hatred, and poverty universal. To-day, the leaders of the two sides come together for a two weeks' parliament, face to face, with plain speaking, without politics, religion, or demagoguery; and there they legislate for an industry that sends upon the market annually \$200,000,000 of product."<sup>3</sup> The agreement reached in 1898 was supposed to cover what is known as the central competitive field, including Ohio, Illinois, Indiana, and Western Pennsylvania.

At the union convention the scale committee makes recommendations with regard to wages and working conditions. If adopted by the convention these are brought before the joint conference of operators and miners in the central field, composed of representatives of each side from each state. In the event that this group is unable to reach an agreement the questions at issue are submitted to a sub-committee made up of a smaller number from each side. When finally an agreement is reached, it goes to the policy committee of the union, composed of district presidents, which decides whether or not to submit it to a referendum vote.

The agreement is usually quite general in its provisions, many of the details being left to the separate districts to decide, though of course no local agreement may conflict with the interstate agreement. An important feature of these agreements is the check-off system, calling for collection by the operators on behalf of the unions of all union dues, assessments, and fines. The check-off puts the union in a very strong position, and also, according to the union, benefits the operators by enabling them to prevent "outlaw" strikes and to exercise discipline in other ways with advantages to themselves. A provision for the settlement of disputes that may arise during the life of the agreement is also included. Each mine has a pit committee representing the leading nationalities in the mine, which considers any griev-

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<sup>3</sup> John R. Commons, "A New Way of Settling Labor Disputes," *Review of Reviews*, 23:329 (Mar., 1901).

ances of the miners and tries to adjust them with the mine boss. If unsuccessful it refers them to the president of the sub-district, who then confers with the mine management. If necessary the grievances may be laid before a joint board.

The agreement did not have altogether smooth sailing. The Illinois operators particularly claimed that they were being discriminated against and at various times withdrew for a period. In 1922 all the operators seemed to favor a return to state agreements. Particularly following the First World War the going was rough. In 1924 the Jacksonville agreement was signed, to run for a period of three years. This agreement continued the wage scale of 1923, the highest reached during the quarter of a century of negotiations between the two organizations. When it expired in 1927, the operators refused to renew it; and after an unsuccessful strike the miners were forced to return to the state agreement.

The failure of the interstate agreement to function well following the war was due not so much to weaknesses in its own machinery as to the nature of the industry. Scattered mines with very diverse mining conditions, added to overproduction, prevented the union from organizing the field completely. In West Virginia the courts helped to keep the union out of the state, and the competition of non-union mines in West Virginia made it practically impossible for the union to maintain its wage rates in the competitive field. The protection, given by New Deal legislation to labor's right to organize and bargain collectively without interference, has made possible the organization of the West Virginia and Kentucky mines. The result has been the return of the collective agreement to its former high status in the bituminous coal district.

The story of collective bargaining in the anthracite district, although not less eventful than that just recounted, on the whole has been a happier one from the standpoint of the miners. Organization was slower in developing in this district. Following a rather serious strike in 1887 it amounted to practically nothing until about 1900. By that time conditions in the entire coal industry, particularly as related to the competition of anthracite with bituminous coal, had given the miners a real incentive to try for a strong organization. The strike of that year was merely the forerunner of the great struggle that was to take place two years later when the anthracite miners waged one of the most spectacular strikes in American labor history. Finally upon the intervention of President Theodore Roosevelt the operators agreed to accept the award of a commission to be appointed by the President.

In general the commissioners' award was favorable to the miners. However, although it required the operators to deal with representatives of their employees, it did not include recognition of the union, a situation which remained unaltered until the Anthracite Commission in 1920 required the operators to recognize the United Mine Workers' Union. A board of conciliation was established for the purpose of adjusting disputes arising during the life of the agreement, to be composed of one representative of each side from each of the three anthracite districts. In case of failure to agree the board was to refer the dispute to a third party appointed by one of the circuit judges of the third judicial circuit of the United States. The functions of the board were changed somewhat in later agreements, but it has always had an important share in the enforcing of agreements in the anthracite district. In one way the award of 1903 proved to be a handicap to the anthracite miners, as the operators regarded it as a final settlement and refused to consider the grievances which arose from time to time. On two occasions the miners agreed to extend the award for an additional three-year period, the original award having been made for the period 1903-1906. Hence with some modifications it remained in force until 1912.

In that year the miners succeeded in bringing the most important operators into conference and collective bargaining was placed upon a new basis. An agreement was entered into for four years. In 1916 this was supplanted by another four-year agreement which has served as the basis for the agreements which have been reached since that time. Several supplementary agreements were entered into during the war, but on the whole the miners were not satisfied. As a result of demands made in 1920 a commission was appointed; but aside from the provision stipulating recognition of the union the miners were displeased with the award and voiced their protest in a vacation strike covering more than half the industry. Promptly at the end of the two years during which the award was to be in force they again pressed their demands and a strike resulted in 1922. In 1923 only the intervention of Governor Pinchot of Pennsylvania succeeded in inducing the combatants to enter into an agreement extending to 1925.

Many weeks before the expiration of this agreement negotiations began for another. The miners included in their demands a 10 per cent increase in piece rates and a dollar a day in time rates, the five-day week, and the check-off. Refusing all demands that would entail increased cost of operation, the operators insisted upon arbitration. The miners stated that they had lost confidence in arbitration in consequence of the award of 1920. There followed one of the bitterest strikes in the history of the anthracite

industry. All attempts to intervene on the part of interested citizens failed. This time even the Governor of Pennsylvania was unsuccessful. Interference by the federal government threatened. Finally on February 12, 1926, an agreement was reached. The old wage scale was to remain in effect until 1930. If either party made a request for a change, both parties were obligated to meet in joint conference. In case of failure to agree within thirty days, the points in dispute were to be referred to a board. Each side was to suggest three names, of which the other side was to choose one. The board was required to reach an agreement within ninety days. To this end they "may enlarge the board to an odd number, in which event a majority vote shall be binding." The miners held that the arbitration was to be voluntary because it was to take place only if they approved of the arbitrator. This provision was not invoked, however. The board of conciliation was also given several tasks to perform: the working out of a "reciprocal program," the equalizing of wages in accordance with the agreement of 1923, and the solving of problems connected with efficiency of production. Though failing to get all that they asked for, the miners regarded this agreement as a real step forward in the development of collective bargaining.

At the expiration of this agreement in 1930 the parties entered into a new one covering a period of five years. The most significant feature of this agreement was the virtual acceptance of the check-off by the operators, who agreed to collect, at the request of their employees, not more than one dollar a month and to forward the sums collected to the union treasury. The old wage scale was continued. The agreement further provided for a permanent committee of twelve, six from each side, who had the power to call in outside experts to consider problems that might arise during the life of the agreement. The development of collective bargaining and the trade agreement in the anthracite coal district must be regarded as one of the major achievements of labor in America, not to say in the entire world, for throughout this development the miners have been called upon to face one of the strongest combinations of employers in the country.

One of the most important contributions that the Amalgamated Clothing Workers has made to unionism is in the matter of agreements. In 1911, three years before the organization of the Amalgamated, an agreement was entered into with the Hart, Shaffner & Marx Company of Chicago.<sup>4</sup> This agreement has been used on a large scale by the Amalgamated as the basis of its agreements. These agreements provide for a trade board composed

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<sup>4</sup> For text of this agreement see John R. Commons, *Trade Unionism and Labor Problems* (Second Series) (Ginn, 1921), pp. 534-562.

of an equal number of representatives of the union and of the association of employers, and presided over by a permanent "impartial" chairman who is employed by both sides. All unsettled disputes reach this board. It is the chairman's function to bring the parties to an agreement, or if this is impossible to render a decision. Since he must be guided by the terms of the original agreement in so doing, his function is really an interpretative one.

In some cases a board of arbitration is provided for; and where this is the case appeal may be made from the decisions of the trade board to the arbitration board. The agreement usually provides that this board shall have final jurisdiction and that it shall consist of a chairman selected by both parties. The Amalgamated has been very successful in carrying its agreement into the big clothing centers of the country, bringing some degree of order into what was formerly one of the most chaotic industries we had.

The use of the trade agreement in the building and the railroad industries emphasizes an important trade union principle—the union should cover the area of competition. Agreements are mainly local in the building industry while the railroad unions are constantly trying to make their agreements at least regional.

Although the trade agreement has by no means "solved the labor problem," it has taken steps in that direction by substituting at some points the milder rule of reason and compromise for the fierceness of tooth and claw. If progress has been somewhat less rapid than was at first hoped, the delay is largely attributable to the employers' unfriendly attitude toward the agreement; for although many employers have come to accept it and some of these are becoming thoroughly convinced of its value, others have been openly opposed to it from the beginning and are only trying it out under protest. The hostility of some is undoubtedly but one facet of their general hostility toward the union and its entire program. To accept the trade agreement is virtually to accept the trade union and there are many employers who can see nothing but bad in the union. There are also employers who make serious charges against the agreement as such and who doubtless do so in good faith. These must be listened to with an open mind, particularly by those who would like to see its use extended.

The employers who have been unfriendly to the trade agreement have been rather successful in spreading the impression that the union is not greatly concerned about keeping its agreements. It keeps them, these employers say, when keeping them is to its advantage. But if market con-

ditions become propitious for an increase in wages, the union demands an increase and threatens a strike regardless of whether an agreement is in force or not. Magnus Alexander, while president of the National Industrial Conference Board, stated, "An equally important fundamental consideration in collective bargaining is responsibility on the part of both parties to the bargain. . . . There must not be any exercise of power without corresponding legal as well as moral responsibility. Lack of responsibility on the part of trade unions for their own acts and those of their agents is one of the reasons for refusal by employers to enter voluntarily into trade agreements with trade unions and to recognize them as spokesmen of their employees."<sup>5</sup>

Many of the leading employers' associations take essentially the same position. Granting an undeniable element of truth in these charges, still there is certainly more smoke being raised than is warranted by the size of the fire. It is significant that there is no large body of evidence to support these allegations. Significant, too, is an item in the report of the National Industrial Conference Board on the use of the trade agreement in the clothing industry, which states that strikes have usually occurred at the expiration of the agreement and seldom during its life. Nor can we ignore the testimony of those employers who say that trade agreements have done much to eliminate from their businesses the petty strikes which were formerly a source of constant irritation.

Another point to be borne in mind is that failure to keep the agreement is frequently due to the national union's inability to control its locals. Employers who have strained every nerve to prevent the union from achieving a sound organization can hardly complain when it fails to keep its agreements because of its weak and defective structure. A number of the unions have both preached and practiced inviolability of contracts. Instances are not lacking in which unions have made a real sacrifice in order to keep their agreements. When a local union of the Longshoremen's Union asked higher pay than the scale agreed upon, the national president, after requesting the employer to pay the rate demanded, fined the local and suspended it until the fine was paid, repaying the excess wages to the employer from union funds. The Brotherhood of Locomotive Engineers has often expelled members for violating agreements. On a number of occasions the railroad brotherhoods have furnished men to replace members who had struck in violation of an agreement. Owing partly to the influence of John Mitchell, the United Mine Workers

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<sup>5</sup> Magnus Alexander, "Collective Bargaining—Some Fundamental Considerations," *Annals*, 90:63 (July, 1920).



Union has always prided itself upon its loyalty to contracts. This spirit was well illustrated during the anthracite strike of 1902. The situation was critical and the help of the bituminous miners might have turned the balance. Yet the special convention voted to stand by the existing agreement, and the bituminous miners remained at work throughout the struggle, giving only their financial support.

Many of the large new industrial unions apparently are having difficulty controlling their individual members. Recently, for example, a vice-president of the automobile workers termed as "mobocracy" the continuous unauthorized strikes of the members of that union and the leaders of several other C.I.O. unions have had similar difficulties with the rank and file who are still not broken to union discipline.

Until some adequate machinery has been devised for enforcing agreements, there will continue to be violations by both unions and management. It has been found necessary to provide legal measures for the enforcement of business contracts. In no field of activity, as a matter of fact, unless human nature undergoes a radical change, will it ever be possible to rely solely upon the voluntary keeping of agreements. As yet no satisfactory machinery is in sight for the enforcement of trade agreements. By a number of courts they have been held not to be legal contracts because of the lack of a "consideration." Hence they probably cannot generally be enforced by law. Sometimes joint boards or standing committees are given the power to penalize individual employees, the local union, or the employer; but usually the difficult task of enforcement is left to the parties to the agreement and they must depend upon disciplining their members. Penalties, which are not usually provided in the agreement, generally consist of fines, suspension, or expulsion. On the whole it must be admitted that up to the present enforcement has been rather lax, and that it is doubtful whether machinery can be developed which will provide the necessary compulsion.

There is another factor that must be taken into account if the agreement is to make further progress. So far, practically no attempt has been made to distinguish between the making of a new agreement and the interpretation of an existing one. This is emphasized by the Webbs: "When the machinery for Collective Bargaining has broken down, we usually discover that this distinction has not been made; and it is only where this fundamental distinction has been clearly maintained that the machinery works without friction or ill-feeling."<sup>6</sup> Perhaps it is not en-

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<sup>6</sup> Sidney and Beatrice Webb, *Industrial Democracy* (Longmans, 1920), pp. 182-183.

tirely accurate to term the one function legislative and the other judicial, yet to a certain extent that is what they are. Disputes are almost certain to arise regarding the interpretation of one or another of the provisions of any agreement. Now such interpretation is entirely an issue of fact and ought to be approached in a scientific attitude without any regard whatever to the desires and the bargaining power of the groups concerned. What we really need for this purpose is a machine which, having accurately registered all the factors involved and their relative importance, will arrive at a mathematically correct result. Since there is no such machine, we are compelled to substitute a man. This man should be one who has a technical knowledge of the industry but is in no way connected with the parties in dispute.

In the making of a new agreement or the amending of an old one the situation is entirely different. Here it is not facts or accepted principles which are at stake. Whether wages shall be increased by 10 per cent or 5, whether the men shall be paid on the run-of-the-mine basis or on the basis of screened coal, whether the ratio of apprentices shall be three to one or four to one, whether the working-day shall be eight hours or nine—all these are matters that cannot be settled by the slide rule. They can only be decided by bargaining, by a trial of strength between the two parties, for unless the agreement when reached is the work of the parties concerned, its chances of being carried out in a whole-hearted way are not very great. It is no job for a technical expert without a stake in the game. The distinction between making or amending an agreement, on the one hand, and interpreting it, on the other, is thus seen to be no mere academic splitting of hairs but a very real difference which, if not properly taken into account, will continue to interfere most seriously with the usefulness of the trade agreement.

Despite its somewhat slow development and its obvious weaknesses, the trade agreement or collective bargaining contract has unquestionably contributed much to the development of the union program and to the stability of industry as well. Upon its extension and refinement and fortification, in one form or another, depends to a considerable degree the continued improvement of industrial relations. Since 1935 there has been a considerable increase in the use of the trade agreement. A recent survey of the Bureau of Labor Statistics shows that in January, 1945, 14 $\frac{1}{3}$  million workers were employed under collective bargaining contracts. Furthermore, these new agreements are providing the necessary methods for settling disputes which arise under the agreements. The work of the National War Labor Board during the recent world war has carried

the use of collective bargaining contracts very far. Hundreds of agreements have been signed upon order of the Board. Probably many of these will disappear now that the Board no longer functions, but no doubt many firms and many unions who have learned the advantages of written agreements through compulsion will continue to use the trade agreement even after the compulsion has been removed. As the national unions become powerful enough to enforce compliance on the part of recalcitrant locals, the collective agreement should become as it has in England—the chief method for conducting employer-employee relations.

#### POLICY OF STANDARDIZATION

The policy of standardization lies at the very base of trade unionism. This is asserted by no less authorities than the Webbs: "We find accordingly that the Device of the Common Rule is a universal feature of trade unionism, and that the assumption on which it is based is held from one end of the Trade Union world to the other."<sup>7</sup> In putting into effect his general program of improving economic conditions by means of collective bargaining, the trade unionist is faced with the problem of making the strength of the weakest bargainer of the group equal to the bargaining strength of the group as a whole. The only possible way to do this is to remove all competition between the individual members, since the terms will necessarily be fixed largely by the weakest bargainers of the lot as long as competition is present.

The most effective way to eliminate this competition, in the opinion of trade unionists, is to adopt a policy of standardization. So essential is this policy to trade unionism that at the risk of explaining what is already obvious, we will set it forth in some detail. Remember that the great aim of the trade union is to improve the economic condition of its members by means of higher wages, shorter hours, better working conditions, a greater amount of control. An individual craftsman, a machinist let us say, is working eight hours a day for a wage of \$8. A second machinist, out of work, applies to the employer for a job.

"I am sorry, but I have all the machinists I can use," says the employer.

Does the machinist pass quietly out of the building? Probably not. Probably he says, "But I'll work for \$7 a day."

The employer becomes interested. He approaches the first machinist and says, "I can get another machinist for \$7."

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<sup>7</sup> *Ibid.*, p. 561.

Whereupon the first machinist must choose between a \$8 man out of work and a \$7 man with a job. Force of circumstances drives him to the latter course—and now is the time for the second machinist to pass quietly out of the building.

The net result is that the machinist without a job is still in that condition, while the other machinist instead of receiving \$8 a day is now working for \$7. The real gainer is the employer. It does not take the machinists long to realize this; and as they would rather do their good turn to some one else than the employer, preferably to themselves, they set about to eliminate competition among the individual workmen. This means, among other things, that there must be a rate of wages below which no machinist will work. The following are the steps in the reasoning: the union is organized to improve the economic condition of its members; to do this it must eliminate individual competition; to eliminate competition it must adopt a general policy of standardization.

Accordingly the fixing of a standard rate is one of the principal tasks to which a union sooner or later directs its energies. By the term "standard rate" is meant a rate of wages fixed according to some definite standard, and uniform in its application. Trade unionists do not use this term exclusively; in fact "union rate" and "the rule" are much more common. Ordinarily these terms indicate a minimum rate. A few unions, however, use them to denote the rate received by the average workman or by the bulk of workmen. It must be kept in mind that the standard rate never means the maximum rate. A trade-union member may always receive a wage above the standard, but he cannot accept one below it without breaking the union rule, except where standard means average and in some special cases, such as those of old or crippled workmen who are unable to earn the standard wage and so are allowed by the union to work for less.

To fix upon a standard rate is by no means a simple matter. The standard rate takes two main forms—the standard time rate and the standard piece rate. In its use of the former the trade union is faced with a difficult problem. Inasmuch as the rate is not the amount that is to be received by all the laborers but is the minimum rate, any worker may accept a higher wage if he can get it. The union, therefore, does not participate in the making of wage rates for all its members. Members who seek wages higher than the standard must get them for themselves. Thus there is no uniform demand which the entire membership of the union feels irresistibly impelled to support. The better-qualified workmen, left to bargain for themselves individually to secure their wage above the standard,

cannot be expected to give their whole hearts to the union's wage program. While it is probably true that the higher rate is based upon the standard and hence that these better workmen will serve their own interest by raising the base, they are quite apt to miss the connection, or seeing it, to disregard it as offering too roundabout a route to the object of their desire.

This problem does not arise in connection with the standard piece rate. There is usually no reason why the rate per piece should be higher for one workman than for another. The better workman gets his larger income from the greater number of pieces produced. Consequently there may be a uniform demand; for since the piece rate applies to all the workers alike, all the workers will want to bring their utmost bargaining power to bear upon this single rate. The problem connected with the piece-rate payment is largely technical, there being of necessity more or less variety in types, styles, and patterns of product. There are also varying conditions. For example, suppose the coal miners are paid by the ton. One miner may do exactly the same amount of work as another and do it just as efficiently, but be unable to produce as much coal because of a relatively large amount of rock in his chamber. Application of the piece rate calls not only for efficient bargaining on the part of the union but for very great technical knowledge as well.

Another important problem in connection with the standard rate, whether it be piece rate or time rate, concerns the extent of the area over which it is to be in force. Some rates may be for the shop only, others for a group of shops, and still others for a much larger territory. As the main reason for the establishment of the standard rate is to eliminate competition, the union will try to make it cover the competitive area. Since only products which are somewhat standardized will admit of the piece-rate system of payment, the area for piece rates is apt to be much larger than that for time rates, because a standardized product is likelier to have a national market than one which is not standardized.

The time rate has generally been favored by the American trade unions. There are some unions that greatly favor the time rate, others that greatly favor the piece rate, and still others to which either is acceptable. Conditions may obtain which in themselves will absolutely preclude the use of the piece rate, such as the product's being incapable of standardization. But it is not these technical obstacles which make up the bulk of the unionist's objection to the piece rate. His chief complaint is that too often it brings down wages. A first glance the piece rate seems by far the fairer system of payment. Why should not laborers be paid according to their efficiency?

What is forgotten by those who ask this question is that as yet there is no principle for determining the base. This is the result solely of bargaining. One laborer produces 20 pieces a day and receives 20¢ a piece, his daily wage amounting to \$4. Another produces 25 pieces a day and he receives a wage of \$5. The difference of a dollar represents a difference of efficiency, and the unionist may see some justice in that. But where did the rate of 20¢ per piece come from? Probably the laborers were getting about \$4 a day on a time basis and the employer considered that a fair day's wage. The average worker was producing 20 pieces a day.  $\$4 \div 20 = 20\text{¢}$ —and so the piece rate should be 20¢. But some of the workers begin to increase their production, earning \$5, \$6, and \$7 a day. "Too much," the employer may say, and he slashes the rate.

The worker finds himself producing more units for practically the same daily wage. No wonder he opposes the piece rate. The Amalgamated Society of Engineers of England says, "The system has often been made the instrument of large reductions of wages, which have ended in the deterioration of the conditions of the workmen. . . . If an expert workman, by his skill and industry, earns more than his neighbor, and much more than his daily wages come to, a reduction is at once made, and made again until eventually the most expert is only able, by intensive application and industry, to earn a bare living, whilst the less skillful is reduced below living prices."<sup>8</sup>

Moreover the trade unionist cannot separate output from the amount of work to be done. As he sees it, the piece rate causes an increase in output, which means less work to be done, which in turn means lowered wages. He contends, too, and this is the charge that has received the greatest publicity, that piece rates lead to a "speeding up" which is detrimental to the workers' health. For this accusation also there may also be some basis.

It is important to realize in this connection that there might be a tendency for individual bargaining to supplant collective bargaining if the use of the piece rate is extended. As division of labor advances, a mechanic's work may vary almost from job to job, and this necessitates a new contract for each job. In many cases, too, each man will be employed upon work which differs somewhat from that of his fellows and which consequently demands a different rate. In such circumstances collective bargaining becomes impossible and trade unionism breaks down at its most vital point.

Before the piece rate can be used at all, of course, there must be satisfactory technical conditions, but where these exist the unions sometimes pre-

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<sup>8</sup> *Ibid.*, p. 292.

fer it. As a matter of fact, in England the piece rate is the more prevalent form of payment, although this is not true in the United States. A most important advantage of the piece rate under some conditions is that it may serve to prevent the very evil that under other conditions it promotes, namely, speeding up. In some industries, the rate of work is controlled by the machine. The operatives have nothing to say about it, they simply have to keep up with the machine. In these circumstances the employer will be tempted to increase the rate of the machine without increasing the pay unless he is paying by the piece, in which case the temptation is largely removed. The Webbs give this as the chief reason why the textile unions of England favor the piece rate. Another important reason has already been mentioned. If the bulk of the work can be reduced in advance to a regularly itemized scale, the bargaining power of the union will be greater with the piece rate than with the time rate; because the piece rate is the rate for all the workers, while the time rate is only the minimum rate and leaves those who desire a rate above the standard to obtain it for themselves.

Although the keenest competition is over the matter of wages, the establishment of the standard rate does not remove all destructive competition. The rate may be standardized at \$5 a day; but the moment one worker agrees to work nine hours a day instead of eight, that moment competition enters and the working day will probably be lengthened. Fundamental in the union program of standardization, therefore, is the normal day. Although perhaps equally as important as the problem of wages, the problem of the normal day is less complex. Except in special cases the length of the day is the same for all the workers in the organization. It is either six hours or seven hours or eight hours, and the number agreed upon becomes the standard for the entire union membership and commands its entire bargaining strength.

Not only does the laborer sell his muscular and his mental energy to his employer for a certain length of time each day, but throughout these hours he also turns over to him the bulk of his daily existence. Hence equally important with wages and hours, though not always so regarded by the laborer himself, are the conditions under which he works. These may be such as will definitely injure his health or even imperil his life. Lack of safety devices and of other precautions may lead to accidents. Poor ventilation, poisonous materials, or unsanitary toilet facilities may ruin his health. It is obvious that these matters like wages and hours cannot safely be left to individual bargaining. The individual workmen are helpless unless the union does their bargaining for them, for there are always some men who are willing to work under the worst conditions. Consequently the

union has extended its standardization policy to cover general working conditions, although on the whole it has not been nearly so energetic in applying this part of its policy as it has been in standardizing wages and hours. The workers are not fully awake to the dangers of bad working conditions. It must be admitted that most of the advance along this line has been the result of activity on the part of the state.

It is clear from the foregoing that the union program of standardization is necessarily a most complex and comprehensive affair, including very minute rules and stipulations to govern all possible situations that the union leaders can conceive of. These are at times extremely irritating to the employer and vastly amusing to the general public, who are apt to see them as ends in themselves and not as part of a program of standardization whose indispensability to the union they do not even perceive, let alone understand. Doubtless the unions do occasionally impose restrictions which are needlessly exasperating, but they cannot be expected to work out and to apply such a complicated policy without making some errors in judgment. The minutia of the standardization policy must be viewed in the large and as a fundamental part of unionism.

#### NEW PROCESSES AND MACHINERY

Closely related to the policy of standardization is the union's attitude toward new processes and machinery, the unrestricted use of which would obviously interfere to a serious extent with the carrying out of this policy. The free introduction of machinery would entail continual and widely differing changes in the industrial conditions of various localities and would therefore be highly inimical to that maintenance of uniform conditions over sections of time and space which is the essence of any policy of standardization.

It does not necessarily follow that the union's policy toward machinery must be one of unqualified opposition, although we find that this was the policy of trade-union leaders in the United States and also in England when the machine first made its appearance and that some of this attitude has been carried over into the present day. About 1870 the cigar makers began to refuse to work with anyone using the mold, but many of the local unions were compelled to surrender and some broke away from the national union. The cigar makers have also been antagonistic to other machinery in the trade. The machinists' union from the outset forbade its members to operate more than one machine of each of certain types. The plasterers have prohibited the use of casts above a certain size. Some local unions of carpenters have tried to put into effect rules prohibiting the use of ma-



terials manufactured by machines. The bricklayers fought the use of concrete when it became a real competitor of brick at the opening of the present century. There is also the well-known opposition of labor organizations to the Taylor system and all other such efficiency schemes.

Two experiences are of such significance that they might with profit be briefly examined. The stone planer was introduced into the stone-cutting industry about 1890, and almost immediately the local union members in Chicago began to try to restrict its use. They tried first to have written into the agreement with the Chicago Cut Stone Contractors provisions limiting the hours during which the machines were to be operated and also requiring that the planers be operated by union men only. At first they were unsuccessful, but in 1896 the union men struck after the contractors had refused to agree to operate the planers only eight hours a day. After about a three-months' strike an agreement was reached in which the contractors promised to operate the machines only eight hours a day and six days a week and gradually to replace the laborers employed as planermen with stonecutters. Two years later the Chicago union demanded that the contractor should employ at least four stonecutters with hammer and chisel for every planer operated. After a ten-weeks' strike the contractors agreed to employ two stonecutters for every single planer and four stonecutters for every double planer. The next year, 1899, the union refused to work in any yard where machinery, except saws and rubbing beds, was used. As a result about \$100,000 worth of machinery was thrown out of use, and planers did not come back in Chicago until after the building-trades strike of 1900.<sup>9</sup>

Other local unions, spurred on by the Chicago victory, began to try the same sort of measures and not without some degree of success. Finally in 1900 the national union took definite action by adopting two rather significant rules: (1) "Planer work will not be permitted to be shipped into any city where the union has succeeded in abolishing them;" (2) "Branches shall make every effort possible to prevent the introduction of planers in their jurisdiction."<sup>10</sup> The attempt to enforce the non-shipment rule led to much bitter controversy not only between the contractors and the union but also between local unions in shipping points (that is, where there was no great local demand for the stone and where the chief markets were in other places) and unions in points where the stone was used largely at the place of cutting. Naturally the locals in the shipping points did not want

<sup>9</sup> George E. Barnett, *Chapters on Machinery and Labor* (Harvard Press, 1926), pp. 182-183.

<sup>10</sup> *Ibid.*, pp. 39-40.

their markets destroyed and they vigorously fought the non-shipment rule. Although modified several times, the rule could not be effectively enforced, and finally at the national convention of 1908 it was abandoned. Three years before that the national body replaced the exhortation to branches to prevent the introduction of the planers by a rule which gave the individual branches the power to "make their own local laws as to whether they will allow the introduction of the planers in their jurisdiction."<sup>11</sup> Other rules restricting the use of the planers were also abolished, chiefly because they were unenforceable. Here and there a local union by taking a very aggressive attitude was able for a time to keep out the planers. For example, the union in St. Louis managed to prevent their use on any large scale from 1900 to 1915. But despite all the rules and all the protests and all the firmly set jaws the planer continued its march, taking a heavy toll among stonemasons.

Essentially the same were the results of the fight put up by the International Molders' Union against the molding machine. At first the union and the workers entirely ignored this young upstart, thinking that so much skill was required that no machine could ever take the place of the hand-worker. In addressing a convention of the union W. H. Sylvis, its first president, said, "Our trade is only in its infancy in this country and it is one of those trades that can never be interfered with by machinery, for the reason that it requires a *thinking machine* to make castings."<sup>12</sup>

But the foundrymen who experimented with the molding machine were well pleased with their results and its use increased until in 1900 nearly 10 per cent of the total molding force of the National Founders' Association consisted of machine operators.

The union was beginning to realize by this time that the molding machine constituted a real threat. At its 1899 convention it unanimously adopted a report containing the following recommendations: "First, that the future policy of the union should be to seek to establish jurisdiction over the molding-machine operator and all those who work in the various subdivisions of the trade of molding; second, that they advise and instruct their members to accept jobs on molding machines and to endeavor to bring out their best possibilities; third, that the officers of the organization ask the coöperation of the foundrymen in forwarding the plan, and in other ways seek to devise means of putting the new policy into effect."<sup>13</sup>

<sup>11</sup> *Ibid.*, p. 47.

<sup>12</sup> M. L. Stecker, "The Founders, the Molders, and the Molding Machine," *Quarterly Journal of Economics*, 32:286 (Feb, 1918).

<sup>13</sup> *Ibid.*, p. 287.

Great difficulty was encountered by the union in carrying out this policy. The national convention had adopted it but the rank and file had too long been either indifferent or antagonistic in their attitude toward the machine. They bitterly opposed the change in policy and refused to help carry it out. The foundrymen were not anxious to give the molders a chance and when they finally did so the work was quite unsatisfactory. The output was much less than when ordinary laborers were used and the molders were always wanting to go back to handwork. Thousands of dollars worth of machinery was scrapped and those foundrymen who did continue with the machines and employed laborers were called upon by the union to pay them "a wage commensurate with their output and skill." In addition to loafing on the job and demanding the same rate of pay for machine work as for handwork, the molders were really not as well fitted for the machine work as were most of the laborers. Brawn rather than brains was needed for the operation of the machine and the molders had not been developed in that way.

Just a few months after the union had voted to cooperate with the foundrymen, the latter through their association adopted a resolution to the effect that they would use their own judgment in choosing men to operate the machines. The union retaliated by trying to organize the laborers. This only put a further strain on the relation between the two organizations. Finally with the panic of 1903 the association was given its chance. The panic resulted in a greatly diminished demand for molders and the association promptly abrogated the arbitration agreement of 1899 and introduced the open shop. It has been able to defy the union ever since.

Active and open opposition to machinery has steadily dwindled with the passing of time. As a matter of fact, the Webbs believe that in England it has practically disappeared. "Among all the thousand-and-one rules of existing Trade Unions, we have discovered only a single survival of the old irreconcilable prohibition, and that in a tiny local industry, which is rapidly fading away. The Operative Pearl Button and Stud Workers' Protection Society, established at Birmingham in 1843, and numbering about 500 members, enjoys the distinction of being, so far as we are aware, the only British Trade Union which still prohibits working by machinery."<sup>14</sup>

The present attitude of American trade unions toward machinery is well exemplified by the pronouncement of then President George W. Perlains, of the Cigar Makers Union, who declared to the 1923 convention

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<sup>14</sup> Sidney and Beatrice Webb, *Industrial Democracy* (Longmans, 1920), p. 395.

of that body: "No power on earth can stop the at least gradual introduction and use of improved machinery and progressive methods of production. Any effort in that direction will react against those who attempt it. Our own condition proves that our efforts at restriction were futile and ineffective and injurious. Without an exception, any organization, since the beginning of the factory system, that has attempted to restrict the use of the improved methods of production has met with defeat."<sup>15</sup> More recently, speaking before the Bond Club of New York in March 1929, President Green of the American Federation of Labor said: "the American labor movement welcomes the installation and extension of the use of machinery in industry."<sup>16</sup> While the unemployment of the thirties somewhat lessened the enthusiasm of labor leaders toward new machine processes, it seems clear that the trade unions have changed their attitude toward machinery. This has been not so much because they are convinced that the machine is blessing rather than bane as because they have had to. Having tried open opposition and been beaten, they realize, and have realized for some time, that a different policy is in order. They have pretty generally learned their lesson.

This does not mean that all the unions have entirely given up trying to prevent the introduction of machinery, as is indicated by the above-mentioned instances of opposition. But usually opposition spells disaster. When, for example, the Flint Glass Workers' Union sought to prevent the introduction of the semi-automatic bottle machine and the stoncutters tried to avert the adoption of the stone planer, the employers simply transferred the work to non-union plants or employed non-union men.

In abandoning their policy of open opposition the unions have experimented with a number of other policies. According to Professor Barnett these may be divided into four groups, according as they are designed: (1) to increase the amount of work going to the handworkers by decreasing the wage for handwork, (2) to enlarge the field of employment for the handworkers so as to include the operation of the machine, (3) to reduce the inflow into the trade, and (4) to distribute more widely the work left to the handworkers.<sup>17</sup>

<sup>15</sup> W. G. Haber, "Workers' Rights and the Introduction of Machinery in the Men's Clothing Industry," *Journal of Political Economy*, 33 .393 (Aug., 1925).

<sup>16</sup> Slichter, Sumner H., *Union Policies and Industrial Management*, (The Brookings Institution, 1941), p. 206, citing *Bridge Men's Magazine*, April, 1929, vol. XXIX, p. 228.

<sup>17</sup> George E. Barnett, *Chapters on Machinery and Labor* (Harvard Press, 1926), pp. 141-142.

Only a desperation so extreme as to preclude the exercise of calm judgment will lead a union to lower the hand rates to compete with the machine. "Hold onto the job" (for very grim and obvious reasons) is the great aim of the workers, and lowered rates seem at times to be the only means at hand of enabling them to do this. The Webbs insist that one of the cardinal points of trade-union policy in dealing with machinery must be not to lower the rates of the handworkers. They contend that if rates are allowed to fall the workers will make a desperate effort to increase their income by speeding up and by working longer days. The work itself will deteriorate and demoralization of the worker and his trade will follow. "When the handicraftsman begins to find his product undersold by the machine-made article, his first instinct is to engage in a desperate competition with the new process, lowering his rate for hand labor to keep pace with the diminished cost of the machine product. . . . He confidently puts his consummate skill against the first clumsy attempts of the undeveloped machine, and finds that a slight reduction in the Standard Rate for hand labor is all that seems required to leave his handicraft in full command of the market. . . . But unfortunately, this is to enter on a downward course to which there is no end. The machine product steadily improves in quality, and falls in price, as the new operatives become more skilled, and as the speed of working is increased. Every step in this evolution means a further reduction of rates to the struggling handworker, who can only make up his former earnings by hurrying his work and lengthening his hours. Inevitably this hurry and overwork deteriorate the old quality and character of his product. . . . And thus we reach the vicious circle of the sweated industries, in which the gradual beating down of the rate of remuneration produces an inevitable deterioration in the quality of the work, whilst the inferiority of the product itself makes it unsaleable except at prices which compel the payment of progressively lower rates. The handworker, who at the beginning justifiably felt himself on a higher level than the mechanical minder of the machine, ends by sinking, in physique and dexterity alike, far below the level of the highly-strung factory operative. There is now no question of his taking to the new process, which has risen quite beyond his capacity. He passes through the long-drawn-out agony of a dying trade."<sup>18</sup> This, they point out, has been the story of the handloom weavers in all branches of the textile industry in England.

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<sup>18</sup> Sidney and Beatrice Webb, *Industrial Democracy* (Longmans, 1920), pp. 414-416.

Then they call attention to the experience of the bootmakers. When the machine came, with its revolutionizing effect upon the industry, the handworkers maintained their old prices. They did not try to compete in cheapness with the new process, and in this instance the maintenance of the price did not destroy the demand but rather gave it permanence and stability. The machine created a new market for itself, a market for cheap shoes. Those who wanted first-class workmanship could get it by paying the full price to the handworkers, and there were enough of these to maintain that market. The less skilled of the workers were encouraged in their youth to go into the machine trade. As a result the handworkers have succeeded in improving their scale of prices and their earnings and at the same time have kept their skill. The Webbs conclude, "We have failed to discover a single instance of supersession by machinery, in which it would not have been possible for the superseded handicraft at least to have died a painless death."<sup>19</sup>

During the period when the linotype was being introduced some proposed a reduction in wage rates in handwork to meet the competition of the machine. The officials of the printers' national union opposed any such policy. The president in addressing the forty-second annual session said, "Those familiar with the productiveness of machines are agreed that hand work cannot begin to compete with them, and it is therefore futile to attempt to stay the tide of their introduction by a reduction in the scale unless we are prepared to suffer level decreases amounting to 40 to 50 per cent, and at that figure a better living could be secured at almost any unskilled vocation."<sup>20</sup> Despite this advice a few of the hand compositors attempted to compete with the machine by lowering the scale. No great amount of success rewarded their efforts although some were able to keep going for awhile, probably owing to the sympathetic attitude of the small communities in which they lived.

Another instance in which prices on handwork were lowered occurred in connection with the introduction of the Owens automatic bottle-blowing machine. The unions did not adopt the lower rates voluntarily as a policy, but were forced to it by the employers. As it turned out their reductions had no great effect upon the amount of displacement of hand labor by the machine.

<sup>19</sup> *Ibid.*, p. 417.

<sup>20</sup> George E. Barnett, *Chapters on Machinery and Labor* (Harvard Press, 1926), p. 16.

As a major policy for dealing with the machine the method of lowering rates seems to be eminently unsatisfactory. The reasoning of the Webbs is borne out by instance after instance in actual trade-union experience. There is some question, however, as to whether in all circumstances the handworker would be able to maintain his trade by keeping up the scale. This can be done only where it is possible to maintain a quality higher than that maintained by the machine. It is true that there are always some who are willing to pay the higher price in order to get the better quality; but what of the products which are better adapted to machine production than to hand labor? In the case of shoes the handworkers could produce a better quality and so could maintain a market for themselves. But the hand market cannot be maintained where the machine-made product is superior or just as good.

It is even conceivable that circumstances might exist which would warrant the handworker in lowering his rate. If he did this with the full realization that the purpose was merely to facilitate the transition to another kind of work the results might be very good under favorable conditions. Suppose the machine is slow in being perfected, making the quality of the product rather poor at first, and suppose further that the margin between the machine cost and the hand cost is not very great. Under these conditions it might be wise to lower rates. The utmost precautions would have to be taken against mistaking a temporary expedient for a permanent policy; for if initial successes gave the workers an ill-founded confidence in the future and they were to follow this method as a major principle, nothing but disaster could be in store for them.

One of the most successful union encounters with the machine was that of the International Typographical Union with the linotype. This is often produced as evidence to support a policy of demanding that handworkers be employed as machine operators at rates of pay equivalent to those which have been paid for handwork. Of course this is a highly desirable policy from the trade-union point of view if it can be effectively enforced.

The experience of the Typographical Union deserves some brief consideration with a view to determining how far the same policy can be made the general rule among trade unions. At first the union's attitude toward labor-saving machinery and toward the use of devices for the duplication of printed matter was one of consistent opposition, except in the case of plate matter. The turning point came with the introduction of the Mergenthaler linotype in 1884. Up to about that time the trade as a whole had been little affected by machinery, typesetting having undergone no ma-

terial change since the sixteenth century. But the linotype was to transform it completely.

By 1889 the machine question had grown serious and the necessity of formulating a general policy had become clearly apparent. At the convention of that year a general rule was adopted which, with only minor changes, continued in force throughout the period of transition to the linotype. The rule read: "The International Typographical Union directs that in all offices within its jurisdiction where typesetting machines are used, practical printers shall be employed to run them and also that subordinate unions shall regulate the scale of wages on such machines."<sup>21</sup> Among other things the union attempted to regulate the work that apprentices might do on machines, and it was not until 1903 that machine products of apprentices were used with the approval of the union. The union took seriously its decision to man the machines with printers. The local unions contrived various means of helping their members to learn the ways of the machines. They even permitted a reduction in wages during the "learning" period. Some of the locals bought or rented machines for their members to practice on. Throughout the entire period the unions realistically faced the undoubted fact that they would simply be giving the jobs away to others if they refused to operate the machines. Never did they revert to their earlier attitude of opposition. In point of fact they actually facilitated the use of the linotype. If some of the local unions resorted to obstructive tactics it was in defiance of the International Union, which consistently refused to countenance any such policy. For the most part the local unions cooperated.

The results of this policy were very gratifying. Printers were used to operate the machines, and it can be stated as a general proposition that their conditions of work did not suffer in consequence of their policy of accepting the machine. The workday was shortened; greater regularity of employment was obtained; and, although the wage rate is difficult to determine, it seems fairly certain from the available data that the machine operators received somewhat more for a ten-hour day than did the hand operators at the time the linotype was introduced. In one respect only did they suffer: it is generally agreed among linotype operators that the strain of machine operation is much more exhausting than that of setting type by hand. On the whole, though, it can be stated that the machine policy of the Typographical Union has been eminently successful.

How are we to account for this success? Samuel Gompers in testifying before the Industrial Commission gave the usual explanation. He asserted:

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<sup>21</sup> *Ibid.*, pp. 9-10.



"The printers have had a most remarkable history, particularly within the past five years. It was during the industrial crisis that a transformation took place in their trade. The machine, Mergenthaler typesetting machine, was introduced, and it is one of the cases where a new machine, revolutionizing a whole trade, was introduced, that did not involve a wholesale disaster, even for a time; and it is due to the fact that the International Typographical Union has grown to be an organized factor, and recognized by those employing printers as a factor to be considered."<sup>22</sup> Essentially the same position was taken by an organizer of the Federation, Mr. D. G. Kennedy. He said, "These [typesetting] machines would now be run by typewriters, not typesetters, had it not been for the union taking possession of the situation to the extent that they compelled them to use a typesetter to run the machine. But the stenographer would be just the party to run it, because that is just what they have to learn—to run it."<sup>23</sup>

There is little question that the union's strength had a good deal to do with the successful carrying out of its policy towards the machine. It is the oldest national union in existence and also one of the strongest. Before the introduction of the linotype its power was quite decentralized with the local unions having a great deal of authority. But when the coming of the linotype brought home to them the need for a strong national policy, the locals rallied to the cause and handed much of their control over to the national body. Then, too, the membership itself was enlightened and of a rather high grade generally, and that was a great element of strength.

But when all is said on this score, there remains one essential fact that must be kept in mind: if the type of work in question could have been easily performed by unskilled workers, the union in insisting upon the use of skilled workers at the old wage rates would only have been courting disaster. Powerful economic forces would have been operating against it, and if the experience of other unions means anything at all it means that it would not have been able to hold out long against these forces.

Certainly one of the important reasons why the union was able to carry out its policy was that it was able to show the employers that there was actual profit in using the printers to operate the machines. The operator of a linotype is not a machine tender. Skill is required, and to a very large extent it is the same skill that is required of the handicraftsman. Practically every bit of knowledge that the handicraftsman had acquired could be turned to good use in operating the machine. Why scrap all this needed skill? Under these conditions the wise policy was obviously to do just what

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<sup>22</sup> *Report of the Industrial Commission*, vol. 7, p. 615 (1902).

<sup>23</sup> *Ibid.*, p. 748.

the printers did: recognize the machine and prepare to operate it as rapidly as possible. Then with their great organized strength they could insist upon the maintenance of the old wage rates. But under other conditions this course might have been anything but wise.

There is a further point to be noted in this connection. If the introduction of the machine means a great reduction in the number of operators required, as was the case with the stone planer and the Owens bottle machine, to get control of the machine and to maintain the old rates will not materially help the situation. Most of the craftsmen will be thrown out of work, and these will not benefit by having the old rates for the few that are left maintained. In this respect also the printers were peculiarly fortunate. The displacement power of the linotype was low, and furthermore the greater efficiency of the machine reduced printing costs and increased the demand for the product.

It seems clear, therefore, that the policy of requiring the employers to put the handworkers on the machines at the old rates is not suitable for general adoption by the trade unions. Conditions must be favorable as they were for the printers; and it has been the experience of most handicraftsmen that conditions are not so favorable, that the displacing machine does not usually require a high grade of skill, or at any rate skill of the particular kind that they have to offer.

Were the national union to exercise strict control over the admission of apprentices, as the American trade union rarely does, it might be able to check the inflow into the trade so as to offset the displacement which occurs during the period when the machine is being introduced. Also by distributing the available work as widely as possible at such times the union may be able to tide the workers over the period of stress. As a means of preventing the displacement or of reducing its amount this method is, of course, unsatisfactory. At best it will only alleviate the immediate distress, and at worst it cannot even do that. For one thing, the employers may not be willing to cooperate. If the machine is such that a new kind of skill or relatively no skill at all is required, they are not dependent upon the skilled workers supplied by the union and can use them or not as seems most profitable. Such expedients as rotating employment and reducing the number of hours in the working day have at times proved advantageous, if only temporarily.

Another policy that should be mentioned in this connection is that of controlling the machine's rate of speed. This can be done most effectively by the use of the piece-rate system of wage payment. That is one reason why many of the English trade unions use the piece rate, because they were

forced to in order to prevent speeding up. Sabotage is a possibility which has been tried. When used on a large scale—a very difficult thing to do—it may interfere seriously with production, but it does not operate to maintain good wage rate. What is desired is a method whereby the rate of speed can be controlled without too great a loss in wages. This has been accomplished by the use of the piece rate in a number of instances.

But the union cannot make such a policy function successfully unless it adopts a liberal attitude with regard to membership. The machine operators must be organized. Immediately the machine threatens, the union must set about bringing all the new machine operators into its fold. Such hospitality comes hard to many American unions. On the whole, craft unions are very exclusive, very reluctant to admit to their organization men who are not all-around craftsmen. Not until they have fully realized their danger have they opened the doors to the machine operators, and usually the change has come too late. Even when the union succeeds in controlling the machine's rate of speed, this is not of itself a guarantee that the old rates will be maintained. If the new work is semiskilled or unskilled, there is bound to be some reduction in wage rates. It can only be said that in numerous cases, particularly in England, the policy has prevented speeding up with its unfavorable effects upon the workmen.

What policy should the union adopt toward the machine? No definite rules can be laid down. The circumstances attending the introduction of machines vary a great deal, and it is these circumstances which must determine the policy. One generalization can be made, however, in the light of the experiences of the many unions concerned. No union should ever adopt a policy of outright opposition. It might as well try to hold back the Atlantic Ocean with a mop as to fight off a machine that has in it the possibility of more economical production.

The general inadequacy of these methods of meeting the problem of the machine raises a question which in its larger aspects concerns the policy of standardization and is also bound up with the problem of trade-union structure. Though the machine has usually been introduced more or less gradually, the workers themselves have not been forewarned of its probable substitution for their labor. As a matter of fact, the employer himself generally has not known just when the machine was to be introduced or the rate at which it would supplant his skilled craftsmen. Hence the laborers have not had—could not have—the knowledge they needed to formulate a definite policy in advance. They have not known where the monster would strike next. Now the old skilled craftsman, and to a very large extent this remains true of his present-day counterpart, was interested in maintaining

a standard rate for his own group only and in organizing with the members of his own group only. The threat of the machine has greatly altered the situation, but the skilled worker is slow to become aware of the change and slower still to perceive its implications. His great desire is to protect his economic position, and he sees all too clearly that the efforts of the union to shield him from the invading machines have accomplished little, but what can he do about it?

There remains a method that has not yet been tried to any great extent—the maintenance of a standard rate for all those working in a single industry, combined with a working agreement among all organized industries to maintain a standard rate for industry in general. All possible competition would be reckoned with by this means. Though the rates for skilled workers would undoubtedly fall at many points, they could not drop below the minimum standard rate. An extension of the standard rate so far beyond its present scope would demand a much broader form of labor organization than we now have in the United States and would demand, moreover, leaders of a high order of statesmanship, wise, just, and able, to inaugurate and to administer so comprehensive a policy.

## CHAPTER IX

### ECONOMIC PROGRAM OF ORGANIZED LABOR

(Concluded)

#### THE CLOSED SHOP

ONE of the most controversial questions connected with the labor movement is that of the closed shop, or the union shop, as the union men prefer to call it.<sup>1</sup> It can be seen from their general aims that the trade unions would necessarily think it highly desirable to control all the workmen engaged in the trade, for obviously they cannot carry out their policies unless they have control over the personnel.

First of all we must distinguish between the different types of shops. Much of the mental confusion manifested by the public regarding this whole question is due to a misunderstanding of the nature of the closed shop and the open shop. There is first the closed shop with the closed union. Here the door is definitely barred to all but members of the union, which has set up rather arbitrary restrictions to keep out new members. The idea is to limit union membership while enforcing the closed shop. Closely related to this is the closed shop with the open union. In general the open union is a union which is open to any workman who is qualified to carry on the trade, the mere fact of his being hired by the employer being usually accepted as *prima facie* evidence of his ability. The man need not belong to the union when he applies for the job, and if he joins without delay the union will be satisfied. Many who are opposed to the closed shop with the closed union have no objection to the closed shop with the open union. At the opposite extreme is the non-union shop, the shop closed to union men. Then there are what might be called the preferential shops—shops which frankly give preference in the matter of shifts, layoffs, and so forth, some to union men and others to non-union men.

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<sup>1</sup> We continue to use the terms union shop and closed shop interchangeably although many writers now distinguish between them. As used today the closed shop designates the plant which hires no one but union members usually sent to the plant by the union itself. The union shop, on the other hand, is one in which every new worker must be a union member or become one within a short specified period. After that specified period of time so far as the worker or the employer is concerned, there is no difference between the closed shop and the union shop. Membership in the union is a condition of continued employment.

It is the open shop which on its face looks most desirable, and for which the employers individually and in groups have at various times carried on campaigns. Theoretically the open shop is one in which union men and non-union men are employed on equal terms. Actually, it is charged by the unions, there is discrimination. The union men claim that in advocating the open shop the employers are really fighting for a shop in which they can punish men for belonging to the union. The open shop has made a powerful appeal to the American people because it has the appearance of being absolutely fair—employ the men who are most competent regardless of whether they belong to the union or not. “No discrimination” seems an ideal motto. In singing the praises of the open shop, the National Association of Manufacturers has done well to call it the American plan, thus imparting to it all the overtones of freedom and democracy with which that name resounds.

The somewhat less enthusiastic Amalgamated Clothing Workers' Union made a very keen analysis of the open shop when it said, “To tolerate the existence of a union when it is weak and without power to interfere with the acts and regulations of management affecting the workers, is one thing. To permit that union to grow strong and to seek to extend its control over the workers as a step toward exercising control over management, is quite another. The theory of the open shop as a permanent arrangement presupposes a stable balance of power as between the employer and the workers, if not a safe preponderance of power on the side of the former. It breaks down in practice as soon as one or the other party attempts to alter the balance. It breaks down when the employer feels himself sufficiently powerful to endeavor to rid himself of whatever restraints the activity or the mere presence of the organization imposes on his freedom. It breaks down, likewise, when the organization gains in power relative to the employer and uses this ascendancy to secure from him recognition for itself and concessions for its members that he would not voluntarily grant. In practice, therefore, the tendency of an open shop is either to degenerate into a non-union shop or to develop into some form of union shop with union recognition or participation.”<sup>2</sup>

An anti-union employer let the cat out of the bag with charming naivete when he said, in speaking to a resolution before the American Idea Convention in 1921: “It is unpopular to say you don't believe in the open shop, but I confess I do not quite know what the open shop means. To my mind it is a good deal of a question of a non-union shop or unionized shop,

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<sup>2</sup> Amalgamated Clothing Workers of America, *The Clothing Workers of Chicago, 1910-1922*, p. 330 (1922).

and I hate to be a hypocrite under a resolution or anything else, or to vote or declare in favor of open shop when my own policy is not to carry that out, but to hit the head of the radical in my shop whenever he puts it up.”<sup>3</sup>

After a study of the open-shop question, the Social Action Department of the National Catholic Welfare Council reported, “Up to the present no authorized representative of an ‘open shop’ organization has denied that collective bargaining with the union is inconsistent with the ‘open shop.’”<sup>4</sup>

Where discrimination can be prevented, the union is not always antagonistic to the open shop. An outstanding example of this is found among the railroad unions, which, in the first place, have insurance schemes that are strong enough to make membership extremely attractive, and in the second, are protected by a seniority rule that largely prevents discrimination against their members.

To many persons outside the laboring class, the closed shop seems an arbitrary interference with “peaceful and law-abiding workmen in their God-given right to labor and enjoy the right to life, liberty, and the pursuit of happiness.” Speaking before the National Association of Manufacturers, the Reverend S. Parkes Cadman, one-time president of the Federal Council of Churches of Christ in America, declared: “There is only one way in which our difficulties in connection with the labor issue can be solved, and that is the way indicated by the title of this address, ‘The Open Door.’ By that I mean, the right of every working man and of every professional man and of every type of man to sell his labor and any other product he has for sale in a free and unrestricted market.”<sup>5</sup>

To trade unionists the closed shop seems in most instances an obviously necessary device for the protection of their interests through union control of working conditions; that is to say, it is one means and an important one of enforcing the general policy of standardization. Sometimes the union does not insist upon the closed shop; but this is usually when, like the railroad brotherhoods, it has become so firmly entrenched that it already controls the conditions of work to a very large extent, is already recognized by the employer, and already bargains with him. Otherwise it regards the closed shop as an indispensable expedient to prevent attacks by the employer and to hold its own members in line. Most well-organized unions operating under collective bargaining agreements also insist that the closed shop offers many advantages to the employer. Union officials, it is held, cannot maintain discipline in the union ranks and thus prevent “outlaw” strikes

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<sup>3</sup> *Nation*, 112:529 (April 13, 1921).

<sup>4</sup> *Ibid.*

<sup>5</sup> *The Open Shop Review*, Feb., 1925, p. 76.

unless a worker who revolts against a detail of the agreement can be disciplined, if necessary to the extent of depriving him of his job.

It is interesting to note that building contractors are by no means unanimous in condemning the closed shop. In fact many of them actually favor it. On a number of occasions the New York contractors have been in a position to institute the open shop but have shown no inclination to take advantage of their opportunity. In Chicago the contractors evaded the provisions of the Landis Award (which had led to a general fight on the part of a citizens' committee to establish the open shop) and made agreements with the unions. At a later date, after the Landis Award had expired, the contractors' association pledged itself to a closed-shop policy. The contractors have found that there is much to be gained by having long-term agreements. As one contractor put it, "It would be practically impossible [without an agreement] for any contractor to undertake a lump-sum piece of work extending over a long period of time. Frankly, I believe that it would be impossible for any contractor to have even the appearance of working under 'open shop' on any work of magnitude, except under peculiar local conditions."<sup>6</sup>

Contractors also like to be supplied with a fairly constant supply of skilled workers; and they find, too, that where the unions have great strength it is usually better to hire none but union men rather than to try to mix the two antagonistic groups. It should be frankly stated, however, that one very strong reason why the contractors want the closed shop is that it makes possible exclusive agreements which enable the organized contractors to discipline the "independent" contractors."

The building industry is the stronghold of the closed shop. According to the National Association of Manufacturers 69 per cent of the volume of construction in 1916 was erected under closed-shop conditions. This came about not altogether because the unions were strong enough to ram it down the contractors' throats, but to some extent because the contractors saw a measure of cogency in the arguments brought forward by the unions.

Recent developments have to some extent changed the picture if not the arguments for the closed shop. The National Labor Relations Act has made it illegal for an employer to discriminate against union members either in hiring or firing. There is little doubt that employers have discriminated against union men in the past. There may still be undiscovered discrimination in the future, but no longer can such a position be taken openly.

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<sup>6</sup> W. G. Haber, *Industrial Relations in the Building Industry* (Harvard Press, 1930), p. 254.



Moreover union members are apt to feel that the non-union men are the hitch-hikers of industry, are parasites and should be treated as such. Union men pay their dues, attend the meetings, make the sacrifices and win the better conditions. The non-union men get all of the benefits without sharing in the costs. Naturally there is resentment, and in asking for the closed shop the union is asking the employer to help force the parasite to pay for value received.

The employers, as a rule, view the closed shop in a very different light. They take the position that every laborer has the right to work for whom-ever he pleases (if anyone wants him) and for whatever wages he desires (if anyone will give him those wages). He is an independent human being and a member of a society which places great emphasis upon individual rights. Should not every laboring man be protected from interference by other laboring men in these free United States? It must not be thought that all employers are insincere who stress this aspect of the open-shop question. They have risen to the top in what they have always believed to be an atmosphere of freedom and they may be thoroughly convinced that not only the best economic results, but the best social and political results, are to be had by allowing every man, free from all restraint, to work out his own economic salvation. In so far as the closed shop prevails, so far is the laboring man's freedom to act according to his best judgment abridged.

Perhaps it is less the worker's freedom than his own which as a usual thing concerns the employer most. He may regard the closed shop as an infringement upon his right to hire the workers whom he considers most efficient whether they belong to the union or not. Suddenly a group of officials inform him that he may not employ certain men. To the employer, who owns the business, this seems to be an intolerable interference with a fundamental right and responsibility of management.

Not only this, but it is also an interference with the efficient operation of industry. Under the competitive system the employer is directly responsible for the success of his business. If he fails to operate it efficiently the loss will be his and he will ultimately be driven out by more efficient producers. The competitive system eventuates in the survival of those most competent to direct industry; and if such a system is to work, if the most competent are actually to be the survivors, they must be unhampered in the control of their respective enterprises. The employer "should not be influenced by any other consideration in the hiring of men than the ability, fitness, or loyalty of the applicant." He should be the sole judge not only of machines, raw material, and other equipment, but also of the men to

be employed. In other words, he must have the unabridged power to reward the efficient, to discharge the inefficient, and to employ those whom he thinks best fitted to do the particular work in question. Of this complete power the closed shop deprives him.

In refutation the unions contend that the closed shop interferes with the working out of this process of survival of the fittest only in so far as the employer is prevented from victimizing the union men. They maintain that when the employer has the unrestricted power which he desires, he uses it less to reward the competent men than to penalize those, competent or not, who belong to the union. They claim that only in so far as it is necessary to prevent such victimization do they interfere with "the right of the employer to hire and discharge." It is only fair to say, however, that under collective bargaining agreements with the Labor Relations Act as a protection, discrimination against union men can be reduced to a minimum whether or not there is a closed shop.

There is much truth in both of these contentions. That the employers use their power of hiring and discharging to "victimize" union men has been shown on a number of occasions. Take for example the former policy of the various steel companies, which John Fitch set forth in great detail after a thorough study: "The fact is, the steel workers do not dare assemble and talk over affairs pertaining to their welfare as mill men.

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" . . . One man, of long experience as a steel worker, who gave me a better insight into mill conditions than any other one person, remarked: 'I used to write for labor papers a great deal, and sometimes I fairly burn to do it now—to declare before the world, over my own signature, the facts about working conditions in the steel industry. But I can't. It wouldn't be safe.' . . .

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"The officials of steel companies make no secret of their hostility to unionism, and I have been told by two leading employers that they would not tolerate it. Any movement toward organization, they assured me, would mean discharge. That this was no idle boast is evident from the record of all attempts to organize since 1892."<sup>7</sup>

In recent years situation in this industry has changed tremendously. In 1945 the Bureau of Labor Statistics estimated that the basic steel industry was 80 to 100 per cent organized.

<sup>7</sup> John Fitch, *The Steel Workers* (Russell Sage Foundation, 1910), pp. 214, 215, 219.

The history of the bituminous coal industry also furnishes plenty of proof that the charge of discrimination is not always trumped up for the occasion. West Virginia coal operators even obtained the cooperation of the courts in carrying out this policy of "victimization." The courts have held that if the employee signs a contract agreeing not to join a union so long as he is in the employ of the company, no officer of the union may him to join. This type of contract is of course now illegal under the provisions of the National Labor Relations Act.

The charges of the employers likewise have some basis in fact. Some unions do forbid the employer to hire any but union men and at the same time limit their membership by unjustifiably stringent restrictions. Some unions even have "compulsory waiting lists" and require that the employer hire men from these lists. Naturally enough, both sides are disposed to emphasize those incidents which tend to substantiate their respective views. The truth of the matter is that employers are so different and unions are so different that almost anything might be proved by the all too popular method of generalizing from a few instances.

The argument that in enforcing the closed shop the union is interfering with the rights of the non-union man makes a powerful appeal. The unions reply that it is not their purpose to establish a labor monopoly and discriminate against those who are not on the "inside," that their purpose is only to "get every man following or engaged at a business to affiliate." An important aspect of this phase of the problem was so admirably set forth by Professor Seligman in his presidential address before the American Economic Association that we quote at some length from his statement: "While there is indeed only too much truth in the contention that many of our unions are steering perilously close to the rocks of monopoly and extortion, the problem cannot be solved simply by emphasizing the right of the individual laborer. The right of the individual to work is, indeed, as Turgot told us over a century ago, a sacred and imprescriptible right; but the conditions under which this right is to be exercised are by no means a matter of mere individual discretion and of social unconcern. We are beginning to see that the securest guarantee of liberty is the social sanction—that true and permanent freedom is at bottom an outgrowth of the social forces, and that individual bargaining results in a mere empty husk of freedom. Liberty—to quote Carlyle again—is a divine thing: the liberty to die by starvation is not so divine. If this is true, then the real sacredness and imprescriptibility attach to that wise and collective action which will secure a higher and more effective liberty for the members of the group, and which it goes

without saying must be so devised as not to close the door of opportunity to either the unfortunate or the peculiarly gifted. To magnify the individual at the expense of the social group is to close our eyes to the real forces that have elaborated modern liberty and modern democracy, not in the backwoods of a frontier community but in the busy marts of commerce and the complex home of industry."<sup>8</sup>

Numerous arguments are offered in favor of the closed shop and they are very convincing; and just as numerous and, to many, just as convincing are the arguments that are brought against it. In the final analysis, however, the closed shop must be viewed and must be evaluated in the light of its relation to the fundamental policy of collective bargaining. The union is willing to fight for the closed shop because it considers it essential to the enforcement of union conditions of work. We know this to be true because where it does not deem it necessary to such enforcement, as in the case of the railroad brotherhoods, it is content to accept the open shop. To expect a union to enforce regulations upon recalcitrant members, yet to say that a union member expelled for breaking working rules may continue employment, is asking the impossible from union officials. To approve the principle of collective bargaining while denying the union an instrument which, in many trades, is indispensable to any effectual carrying out of that principle, is a plain manifestation either of hypocrisy or of mental confusion.

A careful sorting out of the various threads which have become entangled in this controversy reveals that, although much of the employers' opposition to the closed shop is in reality opposition to unionism itself, much also from employers, from students, and from the general public, is really directed at the closed union. There seems to be little doubt that if the union at a reasonable initiation fee admitted all qualified applicants, the closed shop would simply be a method of enforcing collective bargaining. Much could then be said for it. Essentially it would be a method of placing the employee upon an equal bargaining basis with the employer and on the whole the results would be improved economic conditions for the laborers. And is it not obvious that when the neediest members of a society improve their economic condition the society as a whole benefits?

It remains true, of course, that even though the union is open, the man who does not want to join it but is compelled to by the enforcement of the closed shop is deprived of a certain amount of his individual liberty, but the liberty that he gives up is nothing to weep over. After all, if the other

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<sup>8</sup> E. R. A. Seligman, "Social Aspects of Economic Law," *American Economic Association, Proceedings*, Pt. 1, 1903 Meeting, pp. 57-58.

workers in the plant are organized, it is only the liberty to get something for nothing; if there is no collective agreement, it is only the liberty to work for lower wages and longer hours; and this upon closer scrutiny is seen to be not his liberty at all.

If, on the other hand, the union does not admit all qualified applicants but tries to put into effect a closed union, the closed shop takes on quite a different aspect. If the closed union is effectively enforced, then it becomes true, as charged, that men are deprived of a real liberty, namely, the liberty to earn their living at a trade in which they are competent to engage, in order that the "chosen few" may thereby increase their earnings. These increased earnings are thus obtained largely at the expense of fellow laborers. Much, therefore, turns on the membership requirements of the union.

Furthermore it must be recognized that not all unions despite their protestations are democratically run. The union boss is often extremely powerful and autocratic. Without control of internal union policies toward individual members there is a chance that autocratic control over a man's chance to earn a livelihood may simply be transferred from the employer to the union business agent.

During the Second World War the War Labor Board was faced with a difficult problem in dealing with the maintenance of union membership. The Board felt that it could not order the closed or union shop in plants where no such regulations had previously been found. Yet it became increasingly clear that labor organizations, having given up their right to strike, must have their membership protected if they were to remain the bargaining representatives of the workers. Out of this situation the Board developed the maintenance or membership clause which it ordered in the great majority of contract dispute cases referred to it.

Simply the maintenance of membership clause provides that after a fifteen-day period during which any member may resign from the union, a worker then a member of the union must retain his membership as a condition of employment for the duration of the labor contract. Frankly a compromise between the closed shop and no type of union maintenance, this plan devised by the War Labor Board may well become a standard practice in labor relations. It meets many of the common objections to the closed shop in that only those workers who choose to remain in the union at the signing of an agreement must retain their membership as a condition of employment. On the other hand the union is assured of a stable membership during the period of any one collective bargaining agreement. Thus assured, the majority can conduct the affairs of the union without the constant fear of resignations from those persons who

may become disgruntled with the application of proper discipline and restraint.

Maintenance of membership, however, has many problems connected with it which must be solved if the practice is to have an important place in postwar labor relations. Chief among these problems is the power of an irresponsible minority who may, because of the apathy of the majority, gain control of the local union. Such a minority, armed with the powerful weapon of control of a man's right to work, may yield that weapon with uncontrolled fury upon a member who refuses to obey the will of the group. The War Labor Board itself found that men had lost their membership and then their jobs for working too hard or saying uncomplimentary things about the local officers. Obviously some regulation either by the National union or by government must be developed to protect the individual worker from such discrimination. No progress has been made in labor relations if the autocratic control over a man's job once held by the employer is turned over to the autocratic control of the officers of a local union. Protection of the individual is found in many unions by means of appeal to national officers and to the national convention. Perhaps arbitration may eventually be used if the worker and his union cannot agree as to whether his actions are "unbecoming a union member" in the same way that arbitration is now used if there is a dispute between the worker and the employer as to whether the workers actions provide a justifiable reason for discharge.

In January, 1945, 8% (4 million) of all workers under union agreements had closed shop provisions. Approximately 18% (2½ million) of the union members had union shop agreements, 7% of these being under contracts which stipulated that union members be given preference in hiring, 2% of all workers had contracts with union preferential clauses, and 25% were under open-shop agreements. The rapid development and widespread use of the National War Labor Board's maintenance of membership policy is especially noteworthy in studying the figures on union status. In January, 1945, 27% (3¾ million) of all union members were under contracts containing the maintenance of membership clause.<sup>9</sup>

#### MEMBERSHIP POLICY

What constitutes an open union? What standards of admission would go to make up a policy under which the union might justly be termed an open union? That depends upon the point of view, of course, and also upon

<sup>9</sup> *The Management Almanac*, National Industrial Conference Board, New York, 1945, pp. 121-22.

the nature of the industry or the trade. Fees which seem reasonable enough in a trade where the average income is relatively large would look exorbitant if applied in a low-paid industry. And what constitutes competence in a trade depends not only upon the nature of the trade but to a great extent, also, upon individual judgment.

Apprenticeship rules, which have been the most important of the regulations concerning membership, were introduced by the unions largely in order to keep their bargaining power intact. Sometimes they frankly stated that their purpose in limiting the number of apprentices was to limit the supply of labor. A number of unions formerly restricted the privilege of apprenticeship to relatives, and even now attempts are made to do this. A St. Louis contractor once stated that "a boy has as good a chance to get into West Point as into the building trades unless his father or his uncle is a building craftsman."<sup>10</sup> All unions had an age limit for apprentices, all required a definite period of service which was usually much longer than was necessary for the average boy to learn the trade, and practically all limited the number of apprentices whom each employer might hire. The machine has revolutionized apprenticeship along with almost everything else; and in many unions the changing conditions of industry have made apprenticeship regulations highly impracticable, if not quite incapable of enforcement. Although there is still much need for the all-round mechanic, and although in the building trades a high degree of skill and training continues in great demand, nevertheless conditions have so changed as to deprive the unions of much of their control over apprenticeship.

As early as 1904 apprenticeship had lost much of its former significance. In that year Mr. J. M. Motley analyzed 120 national unions affiliated with the American Federation of Labor. He found that 50 made no attempt whatever to enforce apprenticeship regulations, and that of the 70 others only 19 were able to make them generally effective. A number of unions do not need these regulations because the high degree of skill required protects them from being overrun with workmen; while others have found that the requisite skill and training are so easy to acquire that it is useless to attempt to control the training. Mr. Motley found that most of the 19 unions which had been able to enforce the apprenticeship rules were thoroughly organized, highly skilled, and, relatively speaking, economically secure.<sup>11</sup>

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<sup>10</sup> U. S. Bureau of Labor Statistics, *Bulletin No. 459*, p. 9 (1928).

<sup>11</sup> J. M. Motley, *Apprenticeship and American Trade Unions* (Johns Hopkins Press, 1907).

Certain unions which are unable to enforce apprenticeship regulations throughout their entire jurisdictions have been somewhat successful in particular localities where they are strongly organized. Most of the building-trades unions are of this class. On the whole these unions, although having nominal apprenticeship regulations, have made no serious attempt to put them into effect. They have found by experience that it is easy enough to make rules but quite another matter to enforce them. An applicant who is able to command the standard rate of wages has little difficulty today in gaining admittance to the union, regardless of the way in which he has acquired his skill. When a man applies for membership, the question is usually, "Will he cause more harm in the union or out of it?" and not "When and where did he serve his apprenticeship?" Trade schools are being tried by some unions but give no promise of general success because comparatively few places afford prospective craftsmen in sufficient numbers. Perhaps the most effective method of enforcing apprenticeship regulations is found in the trade agreement containing apprenticeship rules. Regulations which are threshed out between the union and the employer, rather than by the union alone, are more likely to be observed.

Despite heroic efforts in some parts of the country to save it and despite the untiring advocacy of union officials, the apprenticeship system seems to be breaking down. Instead of operating to restrict trade-union membership unduly, as is sometimes charged, in actual practice apprenticeship regulations have no considerable effect at all. This may be due in part to the reluctance of boys to spend several years in training at low pay, but the changing nature of industry is probably a more important factor. Employers are increasingly unwilling to hire apprentices. In 1916 the Conference Board on Training Apprentices, made up of national associations of manufacturers, founders, metal trades, employers, and the like, stated: "The average employer, not from necessity but because of thoughtlessness or habit, still prefers to get workmen whom some one else has trained. . . . Limitation of apprentices by trade unions has helped to develop this condition of indifference on the part of employers. Many, however, do not employ the full allowable quota of apprentices which the trade union specifies, and often, for professed convenience's sake and because they do not realize the investment value of apprenticeship training expense, employ none whatever." <sup>12</sup>

In a study issued by the University of Pennsylvania in 1924 covering the existing programs for the training of journeymen molders in the iron

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<sup>12</sup> *Monthly Labor Review*, 22.1055 (May, 1926).



and steel foundry of Philadelphia, the statement is made that the actual number of apprentices in training fell far below the ratio allowed by the union rules. For example, instead of the 61 floor-molding apprentices allowed there were but 22 and instead of the 31 bench-molding apprentices there were but 6. In 1923 as a result of a survey by the Mason Contractors' Association of the United States and Canada concerning the shortage of apprentices in bricklaying the secretary concluded, "These figures prove conclusively that the so-called union restrictions are not a factor in holding back apprenticeship. The work to be done is to get all contractors to take on boys to the limit of the rules laid down by the union."<sup>13</sup>

The apprenticeship commission of the New York Building Congress made a report in 1925 stating that one of the most common difficulties confronting the commission was to persuade employers in certain trades to take their full quota of apprentices. A survey conducted in Boston showed that there were but 80 bricklayers' apprentices instead of the 300 allowed, and 41 of these were apprenticed to their fathers, not to contractors.<sup>14</sup> In a number of reports to the American Foundrymen's Association in 1928 the need of a larger supply of skilled workers is emphasized. In all the comments upon the scarcity of skilled workers, trade-union restrictions are not even mentioned. In general, the causes given are the reluctance of employers to train apprentices and the reluctance of the boys to enter the shops.<sup>15</sup> The reports generally intimated that the boys could be attracted to the industry if they were given a fair chance to learn the trade under reasonable conditions and with reasonable opportunities for advancement.

The situation as found in the building trades of Washington, D. C., in 1924 by Mary Conynghon is probably not unusual: "In not a single trade it which it was possible to calculate the number of apprentices allowed by union rules was the number found to have been reached; in other words, in not a single trade were employers training as many apprentices as the unions were willing to permit. . . . On the whole, there seemed more ground for complaint by the unions that the employers would not train new workers than for complaint by the employers that the unions unduly restrict the number entering trade."<sup>16</sup>

In 1904, as we have seen by Mr. Motley's figures, apprenticeship regulation was attempted by 70 out of 120 unions which were then affiliated with the A. F. of L. By 1936 such regulation was carried on

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<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*, 28:816 (April, 1929).

<sup>16</sup> Mary Conynghon, "Apprenticeship in the Building Trades in Washington, D. C.," *Monthly Labor Review*, 20:4-5 (Jan., 1925).

by only 66 out of 156 national unions in the United States.<sup>17</sup> Professor Slichter points out that since the union's strength is largely dependent upon its members, it is essential that new members be brought into the union wherever possible. The enforcement of highly restrictive apprenticeship requirements would prevent the addition of many workers otherwise eligible to join, and would therefore seriously weaken the union.

The large-scale employer does not want apprenticeship labor merely because he can get it for low wages, as the time consumed in teaching beginners causes delays in work more expensive than the amount saved in wages. In the early days the apprentice could learn the trade by working with the master craftsman, who was an all-round mechanic. Today he has to be passed around from one man to another because the all-around mechanic is no longer there. Having completed his long course of training he finds that there is no great demand for his all-round skill because the trade has become so specialized. Boys see that they can pick up enough of the trade to get a job without going through the long period of apprenticeship. Thus on the employer's side the transformation in industry has added to the difficulty and the expense of furnishing the instruction and consequently has lessened his willingness to engage apprentices; and on the boy's side it has largely removed the incentive to submit to the long course of training.

The latter is less true in the building trades than elsewhere for the reason that these trades have not become so specialized. The machine has not made the inroads into building that it has into other industries. Another factor that has operated to prevent a scarcity of boys in the building trades was the great shortage of skilled laborers that accompanied the building boom following the First World War. The shortage of building mechanics in the United States in 1923 has been estimated to be 23 per cent.<sup>18</sup> Under these conditions wages naturally jumped, making the trades very attractive to boys. In its report of a survey of the apprenticeship problem in the building industry issued in 1928, the Bureau of Labor Statistics stated that unions everywhere reported long waiting lists of applicants for apprenticeships. Joint committees agreed that the problem did not lie in finding material to train. The secretary of one commission in commenting upon an address through a radio station stated, "The results were illuminating and disappointing. We were flooded with requests from boys and parents for more information, and with applicants for apprenticeships, but not one contractor came forward with a request

<sup>17</sup> Slichter, Sumner H., *Union Policies & Industrial Management*, (The Brookings Institution, 1941), pp. 9-10.

<sup>18</sup> H. L. Dennis, *Monograph of Vocational Education Association*, 1924, Series No. 2.

either for the details of the system or for an apprentice." <sup>19</sup> But taking industry by and large, it can be stated that boys are not anxious to spend from three to five years in learning to be all-round mechanics when the probability is that they will be called upon to do nothing but highly specialized work which they could have learned in a week or a month.

The Bureau of Labor Statistics brings out the crux of the whole matter when it states, "In practical application, union regulations governing the ratio of apprentices to journeymen prove to be far less a determining factor in apprentice training than is commonly assumed. Where the highly developed systems prevail, union regulations are apt to be abrogated entirely and the whole question of quota is handled by the joint committee on the basis of the number of apprentices the trade can support in continuous employment.

"Where the method is more desultory the union quota is not an issue for the reason that relatively few contractors have any apprentices at all, and certainly have no disposition to take on more than the union agreement permits.

"If union regulations were in fact responsible for restricting opportunities for apprentices, one would expect to find greater development in open-shop centers. Actually, however, it is much harder to find an apprentice in an open shop than in a closed shop. Only three open-shop contractors were encountered in the course of the investigation who had more apprentices than they would have been granted under union agreement." <sup>20</sup>

The Bureau of Labor Statistics rightfully places the responsibility for the dearth of apprentices upon the employer. The employer in turn can rightfully shift it to the changing nature of industry which he cannot control. It is the machine that has broken down craft lines, that has caused labor to become specialized to a high degree, that has emphasized quantity and speed of production. Under these conditions it is not profitable for the employers to train apprentices. The unions will have to admit, of course, that they are partly to blame. The responsibility belongs to them in so far as union rules restricting the functions of apprentices prevent the employer from using them in the most profitable manner. But if this were the all-controlling factor, the employers would be using more apprentices in open-shop centers.

More recently it has become apparent that in many trades there has developed an acute shortage of skilled labor. In 1937, therefore, Congress allotted funds to the previously formed Federal Committee on

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<sup>19</sup> U. S. Bureau of Labor Statistics, *Bulletin No. 459*, p. 8 (1928).

<sup>20</sup> *Ibid.*, p. 9.

Apprenticeship. Under the administrative direction of the Department of Labor, this committee seeks to promote apprenticeship under proper labor standards in cooperation with the states. It has developed standard rules and agreements for apprenticeship for a number of crafts. In October, 1941, 1066 approved plans were in operation.<sup>21</sup> The impact of the war economy has no doubt checked this revival of apprenticeship, but the committee is there to continue the work.

The general situation is that unionism has been forced to abandon virtually its entire apprenticeship program. In the face of this fact it is certainly not possible at the present time to assert that apprenticeship regulations constitute an unwarranted restriction upon entrance into a trade. Even if the unions so desired they could not become "closed" through the instrumentality of stringent apprenticeship rules.

The employer has frequently been able to get cheap labor in the form of a helper without assuming any obligation to furnish training. The helper has therefore presented a problem to the trade union. A helper is "a person employed to assist the journeyman where the strength of more than one man is required, and to take from the journeyman's shoulders the unskilled part of the process." The helper threatens the trade unionist from two angles. In the first place, he may, and often does, pick up enough of the trade while helping to become an actual competitor. In the second place, he is apt to be assigned to do unskilled work that would otherwise be done by the skilled workman. In the performing of any skilled work some unskilled work is always necessary, as for example in the carrying of lumber in carpentry. If only skilled workmen are employed, all this work will be done by them and they will be paid the same rate for the one kind of work as for the other. So, if the helper does the unskilled work, there is so much less work for the skilled man—or so he thinks—and in this way, too, the helper becomes a competitor.

Indeed he has become a menace of such seriousness that the craftsman has tried in many ways to control his competition. Attempts to organize the helpers have met with slight success. Mr. J. H. Ashworth, who made an intensive study of the helper in American industry, writes, "No national organization of helpers representing only a single trade as distinguished from an industry has ever been chartered by the American Federation of Labor. The Federation has evidently acted wisely in not encouraging such organizations, for their existence would mean endless jurisdictional disputes with the journeymen's unions. It appears, therefore, that if

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<sup>21</sup> Bureau of Labor Statistics, *Handbook of Labor Statistics*, 1941 Ed., vol. I, p. 7.

helpers specialized in a particular trade are ever to be successfully organized, they must be allowed to organize in conjunction with the journeymen of their respective trades.”<sup>22</sup> This has not been particularly successful where tried, owing in large part to the journeymen’s policy of restricting the promotion of the helpers as well as their rights and privileges as union members.

Some unions have tried to restrict the competition of helpers by enacting detailed regulations concerning the work that they may perform. “Carpenters’ helpers are prohibited from using carpenter tools, requiring carpenters to do such work as stripping forms from concrete. Experience shows that helpers can do this more economically and as well.

“Structural steel workers under certain rules must bring the steel from the unloading point to the building site, thus doing laborers’ work at high cost.

“Structural steel men claim the rigging on a job. In operating a small derrick used in footing excavation, the bucket cable had to be guided by hand and the hoisting engineer signalled by a skilled iron worker.

“Hoisting engineers claim the right to run all types of engines, including small gas-driven pumps which require no skill. On one job a carpenter had to hire a union engineer at \$8.00 per day simply to start a pump in the morning, oil it occasionally, and stop it at night.”<sup>23</sup> Such regulations appear in numerous union constitutions, by-laws, and trade rules; but many unions make no attempt to enforce them and many others try and fail. The helper continues to be a thorn in the trade-unionist’s side.

Although the unions have not been eager to admit women to membership, there has been a tendency in this direction. Between 1910 and 1920 female membership in American trade unions increased five-fold, from 76,748 to 396,000. Since then there has been a considerable exodus, amounting to about 100,000. The sudden rise and fall is probably ascribable in large measure to the fact that during the First World War many women entered industry only temporarily. In 1920 something like 42 per cent of the membership was found to be in the International Ladies’ Garment Workers’ Union, the United Garment Workers’ Union, and the Amalgamated Clothing Workers’ Union.<sup>24</sup>

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<sup>22</sup> J. H. Ashworth, *The Helper and American Trade Unions* (Johns Hopkins Press, 1915), p. 127.

<sup>23</sup> Federated American Engineering Societies, *Waste in Industry* (McGraw-Hill, 1921), p. 20.

<sup>24</sup> Leo Wolman, *The Growth of American Trade Unions, 1880-1923* (National Bureau of Economic Research, 1924), pp. 97-99.

A very large part of the membership of both the United Garment Workers and the Ladies' Garment Workers is composed of female workers. The printers' union was one of the first unions to come up against the problem of admitting women. After vainly trying to bar them, in 1884 the union abolished all discrimination on account of sex. With the cigar makers' union the story was much the same.

Some unions still attempt to exclude women. For example, during the period of the First World War no women were employed as conductors on the street-railway lines in cities where there were locals of the Amalgamated Association. But most of the unions have learned by experience that where women have become active competitors, it is better to have them in the union than out of it so that the policy of standardization can be applied to all. In shouting the slogan "Equal pay for equal work" the American Federation of Labor is not so much concerned for the welfare of the women as desirous of eliminating their competition by means of enforcing the standard rate. The men are convinced, and probably they are right, that if the employer is required to pay women as much as he pays men he will engage men.

Very much the same has been the unions' experience with the Negroes. The American Federation of Labor is officially opposed to the exclusion of Negroes, but not because of principle or any great interest in the Negroes. The cold truth is that it has usually been found necessary to admit the Negroes in order to prevent competition and maintain union conditions. A number of the unions expressly exclude them, among these being the four railroad brotherhoods. The general attitude seems to be that when Negroes do enter a trade or an industry, the best plan is to organize them.

Recently in the large-scale industries organized by the C.I.O. Negroes are admitted to membership without discrimination. Even in the Birmingham steel centers, Negroes meet with the white workers to settle mutual problems of collective bargaining. This has developed despite the efforts of anti-union Southerners to inject social problems of race into the mutual economic problems of the two races. It should not be imagined, however, that local unions always accept the non-discrimination position of the national unions. Textile workers in a Southern city recently struck when the management, desperate for workers, established a third shift operation with Negro workers only. Yet the Textile Workers Union of America, to which these local workers belong, is on record as are most C.I.O. unions, against racial discrimination.

In a recent study<sup>25</sup> Mr. Herbert Northrup discusses fully the position of the Negro under both the A. F. of L. and the C.I.O. unions. He concludes that the C.I.O. has been able to obtain marked gains for the Negroes, directly through organizing them with white workers on an industrial basis, and indirectly by affecting the A. F. of L.'s policy toward Negro union members. The Negro's employment status will be worsened since the end of the war in that, being the last to be hired, he will be the first worker dismissed where seniority rules are in effect. But the fact that during the war Negroes worked at jobs from which they were formerly barred has the advantage of having accustomed both the white laborers and the employers to the presence of Negroes in these jobs. Then, too, the Negroes have learned new skills in their war jobs and in the armed forces which will enable them to compete for better jobs in the future.

Sometimes high initiation fees have been used to restrict membership, generally in order to keep out the aliens. For example the photo-engravers' union is authorized, at the discretion of its officers, to charge foreigners an initiation fee of \$200. A number of other unions have resorted to the same stratagem. Sometimes, apparently, high fees are used just to keep down numbers. The wire weavers' union has an initiation fee of \$500. In 1903 the glass-bottle blowers also charged \$500. The building-trades unions have been particularly given to this practice, in fact, as a group they are characteristically anxious to restrict their membership in various ways. The initiation fee for plumbers in New York was \$350 in 1924, and was said to be \$500 in 1927. The marble workers' fee in 1910 varied from \$100 to \$150. In 1914 the New York carpenters charged \$50 for non-union men and \$75 for ex-members rejoining the union. In 1920 the initiation fee for electrical workers in Cleveland was \$200; for elevator constructors, \$100; for stationary engineers, \$100; for carpenters, \$50<sup>26</sup> The building program of national defense has recently brought to light many flagrant misuses of initiation fees.

Nevertheless, despite a high degree of exclusiveness in some quarters, Dr. F. E. Wolfe's conclusion, reached in 1912, that unions in America were on the whole "open" organizations probably remains true to fact today. Any further movement will undoubtedly be in the direction of less rather than greater restriction, not because American trade unionists will have lost interest in trying to create a labor monopoly, but because force of cir-

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<sup>25</sup> Northrup, Herbert, *Organized Labor and the Negro* (Harper & Brothers, 1944).

<sup>26</sup> W. G. Haber, *Industrial Relations in the Building Industry* (Harvard Press, 1930), pp. 202-203.

cumstances will have compelled them to adopt a different policy. It is quite clear that a policy of exclusion can be made effective only in highly skilled trades where the union is able to control the details of the learning process. Competitors outside the union are bound to appear in trades that are easy to pick up, and the union is forced to admit them in order to eliminate their competition. As the crafts break down and work becomes more and more specialized, it becomes easier and easier for men to pick up the various trades—if it is correct to call them trades when the work has become so specialized. The machine thus becomes the enemy of the closed union. And the machine is bound to become more and more powerful as time goes on. The C.I.O. has of necessity adopted the inclusive membership policy. With its organizations almost exclusively limited to large-scale industries its membership is perforce largely unskilled and semiskilled. Under such circumstances an exclusive membership policy is impossible and most C.I.O. affiliate unions admit all workers in the industry, male or female, white or colored, at low initiation fees.

We see that when the membership policies of American trade unions are examined, some of the criticism of the closed shop loses its force. Many students contend that, whereas the closed shop is very objectionable when accompanied by the closed union, when accompanied by the open union it becomes merely an essential element in collective bargaining. If this be true, then the closed shop with the open union cannot fairly be criticized without bringing the whole system of collective bargaining under examination. Meanwhile it must be kept in mind that the unions have rather generally adopted the policy of the open union not because they have been convinced that the closed union is socially objectionable but mainly because the nature of present-day industry has made it impossible for them to enforce it.

### LIMITATION OF OUTPUT

Many phases of the economic program of trade unionism are directly or indirectly related to the problem of limitation of output. To limit output is not generally an avowed aim of trade unions; but the standardization policy, the attitude toward machinery, the closed shop, and the various restrictive tactics with regard to membership all tend to have its effect. It is even charged by many that whatever the ostensible purpose of these policies their main result is curtailment of production. Hence though not an official union policy, limitation of output has its place in any consideration of the general economic program of unionism.



Not only does organized labor usually refuse its official sanction to limitation of output, but usually, also, it strenuously denies any and all accusations that production is deliberately curtailed. In 1925 the American Federation of Labor took a definite stand on the question: "Labor believes that the best interests of all participating in production are promoted by cooperation and that seeming conflicts of interest may be harmonized in the light of more comprehensive information and experience from cooperation itself.

"There is a still more important service that the union can render—that of participating in finding better methods of production and greater production economies. A group of workers cannot enter into this type of cooperation unless they know the results of their work will not be used to their disadvantage. There must be mutual confidence and that stability that makes possible future planning." <sup>27</sup>

The Amalgamated Clothing Workers' Union, as we have already seen, has definitely assumed responsibility for production, and in so doing has become the most important example of a genuine interest on the part of labor in greater efficiency. This union has made a sincere effort to maintain efficiency in the industry. In fact, according to Dr. Savage, "This far-sighted realization that the success of the industry is as much the concern of the workers as of the manufacturers, marks the Amalgamated as perhaps the most progressive labor organization in the country today." <sup>28</sup>

Despite the official attitude of the Federation and the sharp denials of trade-union officials, the old charges of deliberate restriction of output are still being brought against labor organizations. It is true that even in the published by-laws of the unions, where anyone can see it, there is evidence of such restriction. The rules of the plumbers' unions generally require distribution of plumbing materials above the first floor by union plumbers. A union rule in newspaper printing requires that all advertising matter coming into the plant in electrotpe form shall be reset by the compositors. In the printing of names of individual firms on catalogue covers, after each imprint has been run off, the pressroom workers have insisted in some cases that the work be done by a compositor while they stand idly by. Some local painters' unions will not permit their members to use a brush wider than 4½" for oil paint. Quite frequently plumbers' and steamfitters' unions prohibit the use of bicycles and vehicles of all sorts during the working day. The lathers' union has in some cities restricted the amount of lath to be nailed up in one day.

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<sup>27</sup> American Federation of Labor, *Proceedings*, 1925, p. 35.

<sup>28</sup> M. D. Savage, *Industrial Unionism in America* (Ronald, 1922), p. 227.

It is reasonable to suspect that if there are some written rules of this nature, there are more that are unwritten. One of the most sensational reports in all the sensational findings of investigating committees was the report of the Lockwood Committee appointed by the New York State legislature in 1921. An appalling amount of abuse was found by this committee in the building industry, and for once at least the employers seemed to be about as culpable as the unions. Among the practices which were unearthed were definite restrictions on output. Most of this was being done under cover; and it is not at all unlikely, therefore, that more of this sort of thing is being practiced by unions, and employers too for that matter, than has as yet come under the eyes of investigators.

In addition to the restriction of output that is intentionally practiced by unions there is probably some which results incidentally from the putting into effect of other trade-union policies. In some respects the fundamental policy of standardization is out of harmony with the greatest efficiency. It seems obvious that the highest degree of efficiency presupposes continual change and adjustment, and this is scarcely consonant with labor's fundamental policy of uniformity. This policy, while it does not involve an unqualified antagonism to all change, does demand that changes be introduced so gradually as not to upset the union's control of the situation. The Webbs take quite another position. They contend that the "device of the Common Rule" is an aid rather than an impediment to efficiency: "Thus, the effect of the Common Rule on the organization of industry, like its effect on the manual laborer, and the brain-working entrepreneur, is all in the direction of increasing efficiency. It in no way abolishes competition, or lessens its intensity. What is done is perpetually to stimulate the selection of the most efficient workmen, the best-equipped employers, and the most advantageous forms of industry. It in no way deteriorates any of the factors of production; on the contrary, its influence acts as a constant incentive to the further improvement of the manual laborer, the machinery, and the organizing ability used in industry."<sup>29</sup>

The unions' machine policy, whether it be one of trying to prevent the introduction of the machine, or of demanding that the skilled workers be employed on the machine at the old rates of pay, or of controlling the inflow into the trade, must, it would seem, necessarily cause some loss in efficiency. So also any measures to restrict membership which at all interfere with the employer's freedom to hire and fire whomsoever he desires. Does not a seniority rule mean that when workmen have to be laid off, the employer

<sup>29</sup> Sidney and Beatrice Webb, *Industrial Democracy* (Longmans, 1920), pp. 733-734.

must lay off the ones most recently hired, regardless of their efficiency? Shorter hours, too, may lessen output. In fact, at times the unions base their arguments for a shorter workday on the ground that it is a remedy for unemployment. Strikes, jurisdictional disputes, and other forms of warfare are definitely restrictive. There seems no escaping the conclusion that whatever the union's intentions may be, it does restrict output, since such restriction is inevitably a by-product of some of its fundamental policies.

In the very nature of the case is it reasonable to expect anything else than that there will be some discrepancy between what the worker can do and what he does do? Where is the incentive to work at top speed? Why should a man try to increase his production? Tell him that sound economic theory calls for more efficient production, that more efficient production means lower costs and lower prices with ensuing benefits to society. He may know enough to reply that employers do not seem to be increasing production under any and all conditions. It is a well-known fact that we as consumers would benefit if manufacturers of shoes would increase the quantity of their product. But shoe manufacturers, along with other producers, have discovered that it is not always to their interest to increase production.

Consider the situation that exists in many of our major industries during periods of depression. Not only are there more shoes on the market than can be sold profitably, but the same is true of a great many other commodities. Although students differ as to the cause of the business depressions, there is general agreement that there are more commodities on the market than can be sold at a profitable price and that in a number of industries the capacity to produce has been expanded beyond the needs of the money-buying market. This does not mean, of course, that there are more commodities than can be used. At the same time that the glut on the market exists there are millions of people in the country who could use more commodities if they had the money to pay for them. In these circumstances what do the producers do? Increase production or contract it?

In like manner it may be to the interest of the laborers, as producers, to follow a policy of restriction. Wage earners have their own brand of sophistication. Piece rates induced them to increase production and they found that their rates were cut. Workers in the seasonal industries discovered that the more they produced, the longer they were apt to be laid off in slack months. When the laborer acts upon the principle, "I'll produce what it is profitable for me to produce," he is merely behaving like other producers; that is to say, using the brakes when that is profitable, the accel-

erator when that is. Are not restriction of output and limitation of supply of goods "normal and legitimate phenomena in business?"

If limitation of output were wholly the result of union practices and policies and not primarily a phase of the working of the wages system itself, one would have a right to expect that labor cost under union conditions would be higher than under non-union conditions. There are not many data available on this point and it is rather dangerous to draw conclusions from such information as can be obtained. In a study (1924) of building costs in a number of different cities the U. S. Bureau of Labor Statistics found no great difference between non-union and union workers. The Personnel Research Foundation sponsored an inquiry into restriction of output by unorganized workers and the chief investigator concluded, "Restriction is a widespread institution, deeply entrenched in the working habits of the American laboring people. . . . My experience and the experiences of my co-workers dispelled any impression we may have had that restriction is a sporadic practice engaged in only by a few scattered and disgruntled workmen who have a personal grudge or who have been misled by a labor organization."<sup>30</sup>

Must not limitation of output, then, be accepted as an inevitable drawback of the wages system? Is not the question whether the union consciously adopts restrictive policies or whether restriction is merely a by-product of its fundamental policies of standardization, machine control, and membership control, only superficially relevant? Is not Professor Taussig hewing to the line when he says, "The failure to secure the maximum of effectiveness and of product is patent. The universal testimony is that hired workmen do not do as much as they readily could. It is not merely a matter of 'making work' nor is it primarily a matter of lazy repugnance to work. These factors enter, but they are not the most important. The main thing is that hired men are directly interested, not in their work but in their wages. What they turn out inures to the employer, not in any visible way to themselves. The faraway prospect of an ultimate enhancement of the social dividend, their own eventual participation in that dividend, have no effect on their imagination or their conduct."<sup>31</sup>

The logical conclusion from all this is that if the laborer is to cease from limiting output and to produce in all circumstances and at all times as much as he possibly can, the wages system itself must first be modified. The

<sup>30</sup> Stanley B. Mathewson, *Restriction of Output among Unorganized Workers* (Viking Press, 1931), pp. 146-147.

<sup>31</sup> F. W. Taussig, *Principles of Economics* (Macmillan, 1927), vol. 2, pp. 284-285.

worker must be given a voice in the control of the industry and also a share in its products. Such alterations as these may lead, in the opinion of some, to greater ills than those which seem to be inherent in the wages system. But it should be recognized that if the wages system is to remain in force as at present, the laborer, organized or unorganized, cannot be expected to produce to the outside limits of his capacity.

### COERCIVE POLICY

#### (a) *The Strike*

Trade unions, except some of the more revolutionary organizations, prefer to introduce their fundamental policies of standardization, machine control, membership control, and so forth, peacefully, turning to force only as a last resort. Nevertheless the coercive policy, although merely a final recourse when all other means have failed, is a most essential part of the trade-union program. In general it consists of the strike, picketing, and the boycott. It is the union's fighting policy.

The strike is the most effective weapon the trade union possesses, and it will guard its right to use this weapon with the utmost vigilance. Without the strike it feels itself defenseless. Some unions, notably the railroad brotherhoods in their infancy, have thought they could get along without strikes but were soon brought to a realization of their folly; and the railroad brotherhoods, although they have not actually engaged in many strikes, have on a number of occasions made forcible use of the threat. A strike is not a mere withdrawal from work. The workers withdraw, but they also insist upon holding their jobs; and this is the essential feature of the strike. During the entire course of the struggle, they attempt in one way or another to prevent other persons from taking their jobs. Their well-known attitude toward strike breakers or "scabs" is a good indication of their passionate attachment to this feature of the strike. What they want is their old jobs back under better conditions.

The strike is one of the most spectacular activities in the whole trade-union program. More than any other it is the agency through which the union makes its contract with the public. The history of unionism is replete with sensational strikes: the Homestead strike of 1892, the Pullman strike of 1894, the anthracite coal strike of 1902, the Lawrence strike of 1912, the steel strike of 1919, the textile strikes in the "new industrial south" in 1929 and 1930, and the sit-down strikes in the mass-production industries in the 1930's—these are a few of them. Most of these were waged at immense cost, not only in money but in human life. And most of them were unsuccessful. Exciting and important as these conflicts were, they

are not to be regarded as typical of the union's manner of executing its coercive policy. Hundreds of strikes poorer in dramatic appeal have been better organized, less costly, and more successful from the standpoint of results. An exception to this is the anthracite coal strike of 1902, which in some respects was the most important strike in American labor history, being as it was the first successful assault of labor against a powerful capitalistic combination. Not only did it put the anthracite division of the United Mine Workers' Union on its feet, but it breathed new life into the entire labor movement. Thereafter the trade union was recognized as a national force.

In an analysis of strike statistics for the period of 1881-1921 Professor Paul Douglas finds that taking the period as a whole the number of strikes increased.<sup>32</sup> He finds that the proportion of strikes during the years 1914-1921 as compared with the number of wage earners was from four and a third to five times as great as during the years 1881-1885. During the period 1921 to 1932 there was an appreciable decrease in the number of industrial disputes. According to the U. S. Bureau of Labor Statistics 2385 disputes were reported in 1921, in which something over a million workers were involved. From 1922 to 1926 the number of disputes averaged 1050 per year, while from 1926 to 1932 the average was only 770. The year 1933 witnessed a sharp increase with 1695 disputes.

The number continued to increase to 1856 in 1934, 2014 in 1935, 2172 in 1936, 4740 in 1937, then dropped in 1939 to 2613, and to 2508 in 1940. In 1941 the total number of strikes was 4288. From January through September, 1942, 2560 strikes occurred.<sup>33</sup>

A large number of estimates have been made of the monetary cost of strikes; but because of the inherent difficulty of measuring that cost, most of these, though interesting, are not worth a great deal. An estimate for the year 1919 put the loss in wages to labor at \$725,000,000 and the loss to industry as \$1,250,000,000, making a total of nearly two billions.<sup>34</sup> Marshall Olds estimates that the total time lost through strikes in 1919 must have amounted to about 500,000,000 working days, also that the total loss, direct and indirect, to all parties, must have approached \$10,000,000,000.<sup>35</sup> The National Association of Manufacturers estimated that for the eight years 1916-1923 the total cost of strikes amounted to over 12 billions of

<sup>32</sup> Paul H. Douglas, "An Analysis of Strike Statistics, 1881-1921," *Journal of the American Statistical Association*, 18:866-877 (Sept., 1923).

<sup>33</sup> *Monthly Labor Review*, 54:1109 (May, 1942) and 55:953 (Nov., 1942).

<sup>34</sup> J. H. Hammond and J. W. Jenks, *Great American Issues* (Scribner, 1921), p. 99.

<sup>35</sup> Marshall Olds, *High Cost of Strikes* (Putnam, 1921), p. 210.

dollars.<sup>36</sup> Estimates of the cost of the steel strike in 1919 vary from \$10,000,000 to \$245,000,000.<sup>37</sup> One of the most comprehensive estimates of cost was made by Professor Douglas, who contends that "there is but one way of estimating the loss to society due to cessation of work during strikes and that is in terms of the *amount of product lost*."

The United States Bureau of Labor Statistics estimates that during the year 1941 the total number of man-days lost as a result of industrial disputes was 23,047,556; during 1942, 4,182,557; during 1943, 13,500,529, making a total for the three-year period of 40,730,642 man-days.<sup>38</sup> The total number of man-days lost in the eight years from 1934 to 1941, inclusive, was 134,084,019.<sup>39</sup> In evaluating these costs it should be kept in mind that probably not all the days lost during strikes should be charged to them. There might have been some idle days even though there had been no strikes—how many, no one knows.

DEVELOPMENT OF STRIKES IN U. S., 1881-1941  
AVERAGE PER YEAR

Years	Strikes	Strikers	Average Duration (in Days)	Total Number of Days Lost
1881-1885	498	124,005	22.7	2,814,913
1886-1890	1,336	255,863	23.4	5,987,194
1891-1895	1,337	278,868	23.4	7,473,662
1896-1900	1,351	406,639	26.8	8,742,738
1901-1905	2,793	1,547,087	28.2	13,627,853
1915-1921	3,043	1,744,502	28.8	50,241,657
1922-1926	1,250	756,359	....	<sup>a</sup>
1927-1931	736	291,503	....	49,412,082
1932-1936	1,716	973,008	....	76,324,393
1937-1941	3,384	1,331,913	....	85,133,777

\* No information available.

Some estimates of the cost of strikes are obviously absurd while others merit the most careful attention, but none can be taken as anything but an approximation. Samuel Gompers, in speaking of the figures given out by the National Association of Manufacturers, calls attention to an item that

<sup>36</sup> National Association of Manufacturers, *The Cost of Industrial Disputes* (1924).

<sup>37</sup> E. L. Whitney, "Cost of Strikes," *Monthly Labor Review*, 11:597 (Sept., 1920).

<sup>38</sup> "Strikes in 1943," U. S. Bureau of Labor Statistics, *Bulletin No. 782*, p. 2.

<sup>39</sup> *Monthly Labor Review*, 54:1109 (May, 1942).

must not be left out of the reckoning: "The long days and months of suffering during strikes are termed by the National Association of Manufacturers a dead financial loss. The truth is that the gain in manhood and womanhood; the gain in conditions of living; the gain in the changed sense of freedom and citizenship is a gain of such inestimable value to the nation that it is beyond all computation in statistical tables."<sup>40</sup> It may be that the gains resulting from strikes are very great, although incapable of statistical measurement; it may even be that they are, in reality, weightier than the losses. Nevertheless we cannot ignore the element of cost in considering strikes, for it is a real charge and an enormous charge against our present industrial system.

When we come to estimate the accomplishment of the strike in an effort to evaluate it as a weapon of trade unionism, we are again confronted with the difficulty of making anything like an accurate appraisal. The laborers contend that many a strike which was apparently lost has actually been won; that the laborers have gained valuable experience for future struggles; and the employer has had a taste of the opposition, a bad taste which will make him more placable in the future. In the table below the Bureau of Labor Statistics has reported the results of strikes ending in 1943:<sup>41</sup>

RESULTS OF STRIKES ENDING IN 1943						
Result	Strikes		Workers Involved		Man-Days Idle	
	Number	Per Cent of Total	Number	Per Cent of Total	Number	Per Cent of Total
Total .....	3,734	100.0	1,965,151	100.0	13,298,654	100.0
Substantial gains to workers .....	1,145	30.7	355,476	18.1	994,708	7.5
Partial gains or compromises <sup>a</sup> .....	957	25.6	862,253	43.8	9,807,944	73.8
Little or no gains to workers .....	959	25.7	314,154	16.0	962,388	7.2*
Interunion or intra-union settlements ..	139	3.7	59,009	3.0	459,431	3.5
Indeterminate .....	104	2.8	215,976	11.0	457,416	3.4
Not reported <sup>b</sup> .....	430	11.5	158,283	8.1	616,767	4.6

<sup>a</sup> The major coal stoppages accounted for 22 per cent of the workers involved and 64.5 per cent of the man-days idle.

<sup>b</sup> A majority of the strikes in this group were awaiting decisions of the National War Labor Board or other agencies to which they were submitted for settlement.

Violence sometimes accompanies strikes and because of its news value receives publicity out of all proportion to its seriousness and extent. Indeed

<sup>40</sup> *American Federationist*, 31:321 (April, 1924).

<sup>41</sup> "Strikes in 1943," U. S. Bureau of Labor Statistics, *Bulletin No. 782*, p. 22.



in the public mind strikes and violence are almost inseparable, although the fact is that the majority of strikes are carried on without any serious disturbance. "In the course of a dozen years' experience," writes John Fitch, "as investigator, reporter, and editor, I have been at the scene of action of many strikes, but I have yet to see with my own eyes an act of violence in a strike."<sup>42</sup> As the strike leaders themselves usually condemn resort to violence, it is seldom part of a carefully and officially planned campaign. There are so many inflammable elements in a strike that the wonder is less that violence does occur at times than that it occurs so infrequently. For such violence as there is, the employer and the state must bear some of the responsibility. When the strikers are driven away at the point of a gun, when company police swing their clubs about freely, onlookers and participants cannot be expected always to submit without protest. One of the greatest provocations to the striker is the strike breaker, who in his eyes is a traitor and should be treated as a traitor. For him is reserved the most passionate hatred, the extreme of loathing. "If the strike breakers are worthy of protection now," said David Williams, who was officially connected with the railway shop-crafts strike of 1922, "then Judas had a right to take the thirty silverings and lead the Roman horde to the praying Carpenter in the garden of Gethsemane; then Benedict Arnold had the right to direct the soldiers of King George to the sleeping fort on the Hudson—then every spy and traitor has a right to sell his labor to the enemy."<sup>43</sup>

It is true that on rare occasions unions have deliberately planned and executed campaigns of violence. The outstanding example of this sort of thing is the dynamite campaign of 1906 carried on by the Structural Iron Workers' Union in their strike against the National Erectors' Association, in which dynamiting by the union of buildings and bridges in the course of construction culminated in the destruction of the Los Angeles Times building with a loss of twenty-one lives. The bomb was placed by James McNamara, employed in the campaign by his brother John, then secretary of the Structural Iron Workers' Union. Evidence has been brought to light indicating that other unions, particularly the building-trades unions in some of the larger cities, have employed thugs and gunmen to aid them in disciplining strike breakers.

One writer in a study of violence in labor disputes<sup>44</sup> lists "a few bombings and other violent incidents in recent years for which no one was arrested and punished, but most of which were probably perpetrated by

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<sup>42</sup> John Fitch, *The Causes of Industrial Unrest* (Harpers, 1924), p. 235.

<sup>43</sup> *Ibid.*, p. 223.

<sup>44</sup> Louis Adamic, "Racketeers and Organized Labor," *Harpers*, 161:404-416 (Sept., 1930).

racketeers hired by men connected with labor unions, or by union men themselves:

"On May 25, 1925, two company houses owned by the Glendale Gas and Coal Company, at Wheeling, West Virginia, occupied by non-union miners were bombed and wrecked while a miners' strike was going on there.

"On August 30, 1926, two bombs exploded in the factory of L. B. Swinson Clothing Company, at Lakewood, New Jersey. . . . The concern employed non-union operatives, and the bombing occurred shortly after certain organizers failed to induce the company to hire organized men and women.

"On August 19, 1927, more than fifty non-union negro miners were hurled from their beds early in the morning by an explosion which wrecked two buildings in West Elizabeth, Pennsylvania.

"On March 10, 1928, a bomb wrecked the four-story brick plant of the Manhattan Steam and Scouring Company, Brooklyn, New York, after the company's employees had failed to win a strike.

"On February 3, 1930, William Healy, a Chicago contractor, was 'put on the spot' and shot, and before dying, three days later, according to the police as reported in the press, named a walking delegate of the Marble Setters' Union as one of his assassins. This was one of the few labor-racket killings in Chicago; union racketeering in Chicago, as I have said, consists mainly of careful bombings (too many to enumerate here) which at worst throw people out of beds, and of slugging."

And he goes on to list other incidents of the same character. He tells of a "Chicagorilla" whom he knows personally: "He introduced me to his slugger, an exheavyweight pug, a tremendous animal, who is not a member of any labor union but makes a handsome living from organized labor. He charges fifty dollars to go out and impact his fist on some scab's or labor foreman's face.

"I asked the slugger to tell me something about his work, 'Oh, there ain't nothin' to it,' he said. 'I gets my fifty, then I goes out and finds the guy they wanna have slugged. I goes up to 'im and I says to 'im, "My friend, by way of meaning no harm—," and then I gives it to 'im—*biff!* in the mug. Nothin' to it.' One blow from him is enough. The sluggee usually passes out for a while. When he wakes up, often in a hospital, he ordinarily makes up his mind never again to displease any union. Scabbing is thus discouraged."

Roughly speaking, the process by which the gangsters get control over the unions is as follows: When the gunmen and thugs begin to see what an important part they are playing in the union program, they suggest

to the union officials that it would be a good idea if they paid for steady protection, by the month. Having committed themselves to a program of violence, the officials have practically no choice in the matter. Competition among the gangs ensues as union protection is found to be a lucrative business. Of course the union cannot go to all the gangs, and so it must have protection against other gangs as well as against non-unionists and employers. Naturally it goes to "the king" for that protection.

It is also well established that the Western Federation of Miners' Union has at times been guilty of planned violence, and the United Mine Workers have been known to use violence in dealing with company police. One of the most shameful blots on the far from immaculate record of the American labor movement was placed there in 1922 at Herrin, Illinois, during a mine strike which was marked by a good deal of disturbance. One day several men were killed. The events of the succeeding day are described as follows by the United States Coal Commission: "Conference after conference took place in the hope of adjusting the situation. Shortly after daybreak Thursday morning firing began again. The survivors of the mine claimed their white flag was fired on and ignored. The besiegers claim the besieged fired from under the white flag. The fight did not last long and there was a parley. It was agreed that the besieged should march out unarmed and have safe conduct out of the county. It is reasonably certain that those who made the promise made it in good faith; but in the meantime recruits were arriving by the hundreds, not only from Williamson County, but from adjacent counties. The crowd became rampant. It was reported that troops were on the way. This, added to previous stories, made the crowd wild for revenge. The fact that most of the stories were untrue made no difference; they believed them and acted accordingly. Three-fourths of a mile from the mine, McDowell, the superintendent, was taken from the line of prisoners and killed. Then someone suggested that they 'kill them all and stop the breed.' The suggestion was acted upon, and the men were taken from the road into the woods, lined up before a barbed-wire fence, and told to run. As they ran, while climbing the barbed-wire fence, the mob fired. There were between 40 and 60 prisoners; 16 were killed at or near the barbed-wire fence; some escaped and were never captured. Hunting parties pursued those who escaped.

Although the violence which disfigures the pages of strike history has sometimes been premeditated, it is usually a quite spontaneous, almost involuntary reaction on the part of a group of excited individuals to immediate conditions which have set the match to their highly inflammable emotions. That this is true in no way lessens, of course, the size of the bill for ruined

property, deaths, and injuries which must be charged to the account of strikes.

Whether or not we can come anywhere near calculating the actual amount of this bill, it is evident that the cost in money, in life, and in general social disorganization is nothing short of tremendous. Yet despite this enormous outlay the unions insist that their coercive policy, and the strike in particular, is absolutely essential to maintaining their fundamental policies. And they are probably correct. So long as industry remains organized as it is today, there seems to be no other effective way for the laborer to protect his interests (and if he does not protect them, who will?) than by means of collective bargaining, which, without the strike in the background as a possible weapon, would amount to very little.

Not all the strikes themselves, any more than all the destruction that has gone with them, are chargeable to organized labor. According to the United States Commissioner of Labor the unions were responsible for 47 per cent of the strikes that occurred in 1881 and 75 per cent of those in 1905. The percentage for the entire period 1881 to 1905 was 69 per cent.<sup>45</sup> The U. S. Bureau of Labor Statistics estimates that unions were responsible for about 87 per cent of the strikes that occurred during the period 1916 to 1933.<sup>46</sup>

The dominant issue in a large number of the strikes in 1933, 1934, and 1935 was union organization. Other disputes arose over closed shop, discrimination, the "stretch-out" system and similar causes. In 1936 over half of the total number of strikes were over questions of union organization. Demands for wage increases also caused a number of disputes during this year. The up-swing of business and the rapid growth of union organization encouraged the increase in strikes in 1937. In 1938 the percentage of strikes held for union recognition declined, whereas the number in protest against wage cuts increased. The bituminous-coal stoppage, the WPA stoppages, and the Chrysler dispute were the three major disputes of 1939. The bituminous coal stoppage was due to refusal of the coal operators to consent to one of two proposed changes in the new contract—exclusive recognition and the union shop, or elimination of the penalty clause. The second major dispute was in protest against the abandonment of the former wage policy in the new relief bill for 1939-40. The Chrysler dispute ended in a compromise agreement in answer to demands for a wage increase, the union shop, seniority rights, and others. Half of the strikes ending in 1940 were over union

<sup>45</sup> *Twenty-first Annual Report of the Commissioner of Labor* (1906).

<sup>46</sup> *Monthly Labor Review*, 39:74 (July, 1934).

recognition, discrimination, closed or union shop, or similar problems. Wage and hour issues caused over 30 per cent of the total number, and the remaining strikes were caused by grievances over job assignments, pay methods, working conditions, etc.<sup>47</sup>

It does not become the disinterested third party, the consumer—the “innocent bystander”—to be too self-righteous in his condemnation of strikes and the violence that sometimes accompanies them. Let him drop his injured air and the enjoyment of his martyrdom long enough to realize that regard for other people’s feelings must be a reciprocal matter. The laborer cannot be expected to show much solicitude for the community until the community begins to manifest some concern for him. Labor sees the situation with the eyes of G. D. H. Cole, who says, “The consumer is not the innocent third party he is often represented as being; he is the exploiter’s accomplice before the fact.”<sup>48</sup>

### (b) *Picketing*

By many trade unionists the use of the picket is regarded as essential to the prosecution of a strike. Hence picketing constitutes an important part of the coercive policy of trade unions, although it may have no other function than to inform possible strike breakers that there is a strike in progress. This is a fact which workmen are oftentimes prevented from finding out. They may have been sent by an employment agency or have been hired directly by the employer in total ignorance that a strike exists, and upon learning what the situation is they will perhaps refuse to work. Picketing may be their only means of obtaining this information. Picketing may also have the added function of “peacefully persuading” men to join the strike forces. Just when peaceful persuasion crosses the line which separates it from intimidation is a very difficult matter to determine. Picketers often try to put a little fear into the hearts of possible strike breakers by means of social pressure, and this may be quite as compulsive as physical force, if not more so. Every man covets the good will of his class. No one wants to be a social outcast. And the man who declines to be peacefully persuaded by the picket knows he will be called a “scab,” that he and his family will lose all standing among the members of their class.

Although picketing does rather often end in a display of force, it seems to be, as the unions insist that it is, an essential part of their coercive policy so long as the employers try to use strike breakers. Moreover, not all

<sup>47</sup> U. S. Bureau of Labor Statistics, *Bulletin No. 694*, pp. 332-341 (1941).

<sup>48</sup> G. D. H. Cole, *World of Labour* (Macmillan, 1919), p. 402.

the employees belong to the union, and those who do not belong have no means of knowing what goes on at union meetings. When as a last resort the union calls a strike, it seems not only necessary from its angle but reasonable from any point of view that the union representative should be allowed to approach other employees in the plant, or any possible employees, for the purpose of explaining the aims of the strike and urging them to join it. How else can these men learn about the strike and what it is for? And what chance has it to succeed if there is no opportunity to win the cooperation of all the employees? The real problem lies in the difficulty of distinguishing between peaceful persuasion and intimidation, and also in the possibility that even peaceful persuasion may eventuate in blows.

(c) *The Boycott*

The third item in the union's coercive policy is the boycott—"a combination of workmen to cease all dealings with another, an employer or, at times, a fellow worker, and, usually, also to induce or coerce third parties to cease such dealings, the purpose being to persuade or force such others to comply with some demand or to punish him for non-compliance in the past."<sup>49</sup> A number of classifications of boycotts have been made, some of which are quite detailed. For practical purposes any boycott can probably be assigned to one of the following two categories: (1) what might be called the primary boycott, in which the workers immediately concerned, and in some cases sympathetic workers, refuse to deal with the offending employer, and (2) the secondary boycott in which other parties are forced to cease dealing with the offending employer by the threat to boycott them if they refuse. The union label and the "fair list" might be regarded as forms of a negative boycott. Under the positive boycott emphasis is placed upon those firms not operating under union conditions, and under the negative boycott it is placed upon those firms which do operate under union conditions.

In their youth both the nights of Labor and the American Federation of Labor used the boycott a great deal; but as the employers have become more familiar with trade-union tactics they have learned better how to meet it so that it is in less general favor than it used to be. Trades which deal in necessities, particularly foodstuffs, have had fairly good success with it. The unions have learned that their chances of a success are better if the boycott is employed against a commodity that is consumed in large quantities by the laborers themselves, upon whom the union must largely depend for

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<sup>49</sup> H. W. Laidler, *Boycotts* (Dodd, Mead, 1914), p. 60.

cooperation; also if the good is sold in such a way as to make it easy to detect violations. Like other men union members are guided largely by self-interest, and will usually buy the cheaper good whether it is union-made or not, unless they are being observed by some fellow unionist. That is one reason why the cigar makers and the brewery workers have been particularly successful in enforcing boycotts.

Further increase in the effectiveness of the boycott must come about mainly through education of the public. The general view is that a man's business is his own affair and that within the law he has a right to carry it on as he wishes. It is also generally thought that a man has a right to purchase what he likes and from whom he likes, but when a group of men combine in refusing to buy from a particular seller and especially when they entice or force others to join with them in refusing to buy, the man in the street is apt to construe their act as a deliberate attempt to destroy property. So impressed is he by the immediate effect, by the serious, perhaps ruinous, loss of business to a proprietor, that he has no eyes for the reasons lying behind the concerted withdrawal of patronage. So, naturally, he condemns it.

There is some question whether the boycott will take a prominent place in the union's coercive policy. It has been used less in recent years than formerly, not only because of the employer's more effective resistance but also because it has been found to have serious disadvantages from the union point of view. An effective boycott is quite likely to cause unemployment in related trades, inconveniencing and alienating the workmen engaged in them. There is also the very great possibility of undesirable aftereffects, especially the destruction of the market for the good. The boycott is essentially an attempt to destroy the market, and is successful only in so far as this object is accomplished. Yet once the union has come to terms with the employer, its need for a good market is just as great as his; and then it may find to its sorrow that it has done its work too well. Because of the serious disadvantages which seem to be inseparable from the boycott even when it is successful, Samuel Gompers believed that it would become less and less important as a trade-union weapon.

The union label was first adopted by the cigar makers in 1875, but did not come into extended use until rather late. The Union Label Department of the American Federation of Labor was established in 1909 and has carried on a vigorous educational campaign that has helped greatly to widen the use of the label. At present practically every union, both A.F. of L. and C.I.O. that can use a label at all is doing so, although it is not invariably effective. It seems likely that in the future union activity will

be directed more toward extending the use of the label and less toward extending the use of the boycott. The label has one distinct advantage over the positive boycott in that the latter has had a very unsuccessful career before the courts, while the legality of the union label has never been seriously questioned.

### BENEFIT FEATURES

Among the oldest activities of trade unions are those having to do with the granting of benefits to members. In fact until the repeal of the Combination Acts in England in 1824, these were the projects that most engaged the laborers' attention. The "friendly" activities are older than the more directly economic ones, but with the development of industry on a large scale they fell back into a secondary position. More recently the establishment of trade unions on a sound economic basis has made possible a return to the friendly activities and an extension of their scope, though they are still distinctly subordinate to the activities immediately connected with collective bargaining. It was not until after 1880, when the cigar makers led the way by establishing a beneficiary system on a national basis, that the national organizations began to develop schemes on a comprehensive scale.

Most unions make provision for the great calamities of death, illness, and accident, death being the most often provided for. A number assist the surviving families in some way. Some pay benefits to members suffering from tuberculosis, others provide for their treatment in sanitariums, while still others contribute regularly to private sanitoriums. Several of the stronger and wealthier organizations, notably the carpenters, the railroad brotherhoods, and the printers, maintain homes for their aged members. A few provide annuities for those who because of age, illness, or disability are unable to continue at work. It is obvious that only well-financed unions can carry on activities of this nature, as the cost of maintaining a home or a sanitorium or a pension class is very great. Yet except among the more revolutionary unions the movement is definitely toward an expansion of beneficiary effort as the union funds permit. It should be borne in mind that first and foremost in importance among the claims on the union treasury are certain benefits that have no place in this immediate discussion, namely strike benefits. The union is organized for the purpose of maintaining and improving the economic condition of its members and the strike is essential to accomplishing this purpose. Hence the "war chest" is vital to the union's success and has first claim on the treasury. But strike benefits are not a friendly activity in the same sense as sick benefits, death benefits,



and old-age pensions and so are not treated in this connection. In 1939, from 109 national unions for which figures were available, \$1,500,000, or less than 8 per cent of the total disbursements, were for illness; \$12,900,000, or about 60 per cent of all disbursements, were death benefits.<sup>50</sup>

Viewed individually, the actual payments are, as might be expected, pitifully small. The wage earner is in no position to provide adequately for the emergencies of life. Death benefits, for example, range from \$20 to \$1500, with more crowded around the smaller figure than around the larger. Disability benefits range from \$50 to \$800. Weekly benefits payable in case of sickness range from \$4 to \$10, over a period of from seven to sixteen weeks per year. The range for old-age pensions is \$5 to \$70 per month. When the old-age pension is a lump-sum benefit, the amount ranges from \$50 to \$800.

The carpenters, the cigar makers, and the printers have probably the most comprehensive benefit systems of the unions affiliated with the A. F. of L. The railroad brotherhoods have long been noted for their benefit systems. The Locomotive Engineers, for example, require that each member who can qualify take out in their insurance association a policy of at least \$1500. Group life insurance is gaining in favor among some of the unions and a number of policies are carried with the Union Cooperative Life Insurance Company, the Labor Life Insurance Company, and also with some of the old-line companies.

Unemployment has always been one of the gravest problems with which the individual laborer and the trade unions have had to grapple. The unions have made some attempts to render unemployment less terrifying by the granting of out-of-work benefits, although they have not gone nearly as far as the English trade unions have. Very few national unions in the United States have essayed anything of this kind. Of the thirteen national unions which have operated unemployment benefit plans without assistance from employers, only two have succeeded in maintaining them: the Deutsch-Amerikanische Typographia and the International Association of Siderographers. The Diamond Workers' Protective Union, which had maintained a national plan since 1912, was forced to discontinue it in 1932 because of lack of funds. In addition a number of local unions have out-of-work benefits. There were thirty-seven locals in 1934, representing eleven national and international unions,<sup>51</sup> which had some provision for

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<sup>50</sup> Carroll R. Daugherty, *Labor Problems in American Industry* (Houghton Mifflin Co., 1941), p. 498.

<sup>51</sup> The Deutsch-Amerikanische Typographia, which has a national benefit system is counted as part of the International Typographical Union, which also has two local plans.

unemployment benefits. In the same year the total of trade-union members protected by some form of unemployment insurance was only 39,000, comprising less than 1 per cent of organized labor membership within and without the American Federation of Labor.<sup>52</sup> The introduction of unemployment compensation and old-age insurance by the government has made these benefit activities of trade unions still less important.

On the whole the unions have not constructed their various insurance plans upon an actuarial basis. Most of them have simply made an estimate and then added this amount to the regular dues, making up the balance later by assessment if the sum turned out to be insufficient. Some unions have accumulated funds in amounts that should prove adequate, but others have made their payments too large and have got themselves into trouble. Since trade conditions, and particularly conditions of unemployment, tend to make the whole benefit system unstable, many unions have been compelled to reorganize their systems drastically or to abandon them in favor of some other plan such as group insurance.

A question naturally arises as to what place beneficiary features have in the economic program of trade unions. These features have been subject to much criticism from many quarters. Strike benefits and out-of-work benefits, particularly those that are used in England to carry on the "de-tailed" strike, clearly have a place in the trade-union program, and just as clearly must be administered for their respective purposes by the trade union itself and nobody else. But the strictly beneficent features, it is charged by some, tend to make the union conservative and more occupied with protecting its own "property" than with fighting to bring about a more equitable distribution of all property. It is claimed that when the union has a comprehensive insurance plan, the officials must give their attention to it instead of to the activities which are really proper to the trade union; whereas other agencies, as a matter of fact, could do the insurance work much more efficiently.

It must be admitted that there is some truth in these charges. It is an observable fact that the more conservative unions are indeed the ones which have developed strong insurance plans, although it is not so clear that it is their insurance schemes that have caused their conservatism. To be sure, wage earners are no different from other men; if they possess property they are going to protect it to the limit of their ability. In so far as they apply their energies to this end, they may be diverting them from the fight for a larger share of income, a fight not entirely consonant with too great a reverence for the possession of property.

<sup>52</sup> *Monthly Labor Review*, 39:1-24 (July, 1934).

It is also true that regularly organized companies can administer insurance more efficiently, but efficiency is not everything. A most pressing need of the trade union is to get members and to keep them, and this need is served by attractive insurance features. One reason why the railroad brotherhoods are content with the open shop is that they are convinced that their insurance features are alluring enough to bring in the eligible men. Experience has proved that this confidence is well placed; and it is obvious that men who join a union voluntarily will make much better members than those who by one method or another are forced into it. Once in, too, they are more apt to stay in if they have something at stake in the form of insurance.

Perhaps the heaviest argument in support of beneficiary plans, from the trade-unionist's standpoint, is that they keep the union treasury full. As a rule unions do not separate the insurance funds from the general treasury, nor do they hesitate in case of a strike to use these funds. There is a good deal to be said for the statement that a union is no stronger than its treasury. To the unionist there is no question of misappropriating funds when he uses insurance money for purposes other than insurance. A successful strike, in which perhaps the balance is turned by this very money, means greater income to the members and from this added income the insurance funds can be replenished. In other words, in the unionist's eyes the beneficiary system is an essential part of the trade-union's economic program. Even if the various projects could be operated more efficiently by other agencies, they have economic values for the organization itself which are too great to be relinquished.

A new approach to benefit programs for organized labor has been developed recently. The employer is being asked to contribute a percentage of the total pay roll to the union for a benefit system for union members. As we shall see in a later chapter, many companies are providing various types of group insurance through collective bargaining, but these plans are generally with established insurance companies. The Musicians' Union and the Mine Workers Union have demanded control of the welfare fund for themselves. If these unions are successful in their demands, other unions will also levy upon the employers for a comprehensive union-controlled benefit program.

## CHAPTER X

### POLITICAL PROGRAM OF ORGANIZED LABOR

#### DEVELOPMENT OF POLITICAL POLICY

THE political program of organized labor is somewhat distinct from the economic one until you come to the ends which they are seeking, and there the lines converge. In general, therefore, the two programs may be regarded as two different paths to the same goal, although in some aspects the political program is more accurately thought of as a method of making the economic one more effective, or even, it might be said, of enabling some parts of it to exist at all. There has been and is no clear-cut, itemized, permanent program that can be spoken of as the political program of organized labor, nor have the American Federation of Labor, or the Congress of Industrial Organizations, any such program. There are and always have been, both within and without the two federations, currents and counter-currents of ideas and opinions, incessantly ebbing and flowing and shifting direction. Whatever the official position at any given time, strong opposition has always been apparent within the ranks.

Some familiarity with the past history of labor's political activities is necessary if one is to understand its present attitude toward politics. From the very beginning legislation has been looked to by some as the one great hope of the working class. But all too often, like so many great hopes, it has proved a snare and a delusion. Usually when the workers have striven for political reforms they have failed; and when, now and then, after grueling effort, they have thought themselves victorious, they have not seldom discovered later that what they held in their grasp was only an empty husk, a mere form without substance, which could do nobody any good. It has sometimes turned out, on the other hand, that legislation has greatly aided the development of labor organizations, particularly in a negative way by removing obstacles to their growth. For example, the British acts of 1824 and 1825 gave great impetus to the trade unions.

The period before the Civil War was a vexatious one for the struggling trade unions of the United States. Organization followed rhythmically upon collapse on the the afterbeats of good and bad times, the periods of business depression usually giving rise to various utopian movements that had

as their great aim some comprehensive political reform. Quite commonly the youthful labor organizations were lured by their own rosy hopes into the political arena. Among the earliest to find its way thither was the Mechanics' Union of Trade Associations, organized in Philadelphia in 1827 and so far as is known, the first city central organization of trades in the world. In the following year this became a political organization and initiated an interesting political movement, the core of which was a demand for equal citizenship. It was a real rebellion of the newly enfranchised wage earners. Conspicuous in their program was a plank demanding free education at the expense of the community, a system of training which would "combine a handful of the practical arts with that of the useful sciences."

The years 1828-1830 were notable for the formation of political labor movements and labor parties. The first working-men's party originated in Philadelphia, with New York and Boston soon following suit; and Pennsylvania, New York, and Massachusetts became the birthplaces of subsequent organizations. Although these movements cannot be termed successful in the sense that they accomplished what they set out to do, they did place before the people in an advantageous light their most important demands, such as free education, a mechanic's lien law, and the abolition of imprisonment for debt. Somewhat important was the agrarian movement inaugurated by George Henry Evans, which called for free homesteads, homestead exemption, and land limitation. It is interesting to note that Evans and his followers instead of supporting an out-and-out labor party urged the policy of "reward your friends and punish your enemies" which was to take a prominent place in the program of the American Federation of Labor. Their victory, although incomplete, was important because it taught labor the lesson (soon forgotten, and several times relearned by hard experience) that it was best not to place too great reliance upon political office and power but to concentrate on a leading issue for the purpose of winning wide popular support.

The sixties brought more political activity of a rather general character. The Grand Eight-Hour League of Massachusetts was organized in 1866 and was followed by locals and other state leagues. The National Labor Union, organized in the same year, concentrated on an eight-hour law for employees of the federal government and later made an unsuccessful attempt to organize an independent labor party. Although the enactment of some eight-hour laws was obtained, there was no serious attempt to enforce them. The typical attitude was that of the governor of New York, who, upon being asked to enforce the eight-hour law, declared that every law was obligatory by its own nature and could derive no additional force from

any act of his. After much strenuous activity, labor did finally succeed in getting enforced a ten-hour law for women which was enacted in 1874 by the state of Massachusetts. As one failure followed another, the workingmen gladly turned again to the trade unions, leaving the political stage to the greenbackers, who, in spite of several years of zealous performing, never got very far with their cause.

The Knights of Labor, we recall, had a rather elaborate political program and undertook many political ventures. When the Federation of Organized Trades and Labor Unions of the United States and Canada was organized in 1881, it adopted the Knights' program almost in its entirety, including the political features, with which, however, it soon became dissatisfied, as is evident from the manifesto of the second convention which "looks to the organization of the working classes as workers, and not as . . . politicians. It makes the qualities of a man as a worker the only test of fitness and sets up no political or religious test of membership." In some of the larger cities of the country various local labor groups organized political parties, and Samuel Gompers himself participated quite actively in some of these.

The Progressive Labor Party was certain to go on the rocks, according to labor men, because it was dominated by persons outside the ranks of labor. More and more, as these early efforts petered out, the Federation relegated its political program to a secondary place. The nineties brought turmoil into its ranks; political and economic interests clashed, and Gompers saw himself ousted from the presidency for the only time during the long period of his association with the Federation. The socialists made strenuous efforts to gain control by "boring from within" but could not persuade the convention to accept the political program which they were urging, although they did get the majority of the affiliated unions to adopt it. During the year 1894 the trade unions took an active part in politics, the Federationist giving a list of more than 300 union members who were candidates for elective office. Practically all of these were defeated, and in 1894 the entire political program was voted down by the convention of the Federation.

In 1895 the Socialist Trade and Labour Alliance was formed under the leadership of Daniel De Leon in an attempt to absorb all the socialists from the Federation. It was a failure from the start. The next year the Western Federation of Miners withdrew. These secessions only increased the bitterness of the Federation toward the socialist program, including independent political action, although it did not give up all attempts to obtain favorable legislation. A regular legislative committee was authorized

in 1895, whose members were to give all of their time to matters of legislation. On the whole, however, the Federation's attention was consumed by the specific problems of wages, hours, and working conditions, and by the effort to attack them through more efficient collective bargaining.

Although labor as represented by the Federation had decided in general to let the government alone, the government did not reciprocate. Government action in the form of injunctions, damage suits, and so forth, was being successfully prosecuted against organized labor; and labor began to realize that, like it or not, it was going to be forced into some kind of political activity. The Federation determined to enter politics in a more active manner, and drew up a bill of grievances which it presented to the President of the United States and to Congress. The bill put forward a number of demands for legislation, such as the eight-hour law for federal employees, restriction of immigration, exemption of labor from the provisions of the anti-trust laws, and prevention of the use of the injunction in labor disputes.

In 1906 the Federation took a memorable step by adopting the policy of rewarding friends and punishing enemies: "We will stand by our friends and administer a stinging rebuke to men or parties who are indifferent, negligent or hostile; and, wherever opportunity affords, secure the election of intelligent, honest, earnest trade unionists, with unblemished, paid-up union cards in their possession."<sup>1</sup> The convention further stated that "the American Federation of Labor most firmly and unequivocally favors the independent use of the ballot by the trade unionists and workingmen, united regardless of party, that we may elect men from our own ranks to make new laws and administer them along the lines laid down in the legislative demands of the American Federation of Labor."<sup>2</sup> A few men favorable to labor were elected in consequence of this renewed interest in political campaigns but the results were not phenomenal.

The Federation's bill of grievances was presented to the Republican convention in 1908 and was completely ignored. When offered to the Democrats it was adopted, and then readopted in 1912. In consequence of the split which that year divided the Republicans, the Democrats came into power. Labor obtained some favorable legislation and during the war reached unprecedented heights in its influence with the government. A sharp reaction followed the war. The Federation, in conjunction with the railroad brotherhoods and certain farmers' organizations, drew up another bill of grievances and presented it to the proper authorities. Again in 1920

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<sup>1</sup> American Federation of Labor, *Proceedings*, 1906, p. 33.

<sup>2</sup> *Ibid.*, p. 32.

the platform of the Federation was submitted to the Republican convention and again it was ignored. From that time until 1933 the Republicans, never warm friends to labor, were solidly entrenched and labor made little headway against their ramparts. In 1924, in opposition to the wishes of some of the strongest unions, the Federation endorsed the LaFollette-Wheeler ticket, but announced through its 1925 convention that it had not given up its non-partisan policy (which it reaffirmed) by organizing a political party. Since 1933, when the Democrats again came into power, a considerable amount of favorable labor legislation has been enacted. Although some reaction may be expected, it is quite certain that the fundamental parts of these gains will be permanent.

The Congress of Industrial organizations has shown more interest in political activity than the Federation. At its fourth convention in 1941 a resolution was adopted stating that the C.I.O. would "dedicate itself to full participation in the political life of this country, uniting its strength and resources with all other liberal and progressive forces . . ."<sup>3</sup> This general statement of policy was implemented by action of the executive committee which in July, 1943, established a committee known as the C.I.O. Political Action Committee.

Reporting to the 1943 C.I.O. convention, President Philip Murray explained to the delegates something about this new committee so recently created.<sup>4</sup> He told the members that the purpose of the committee was to conduct a broad and intensive program of education in order to mobilize C.I.O. members and other trade unionists "for effective labor action on the political front." The purpose, he continued, was not to form a third party but to rally labor support in the crucial 1944 campaign and for future political activity.

Murray's proposal won overwhelming approval from the convention, and the committee, under the enthusiastic leadership of Sidney Hillman, set up national offices in New York, organized various divisions such as a press division, a publications division, a radio division, a speaker's bureau, etc., and started preparing publications, posters, stickers, buttons, songs, and slogans. Upon observing the zeal in the National Office, one newspaper man is reported as saying, "This isn't a Committee—this is a crusade."<sup>5</sup>

<sup>3</sup> Congress of Industrial Organizations, *Proceedings*, 1941, p. 212.

<sup>4</sup> Congress of Industrial Organizations, *Proceedings*, 1943, pp. 82-83.

<sup>5</sup> Joseph Gaer, "The First Round, The Story of the CIO Political Action Committee" (Duell, Sloan & Pearce, 1944).



Working with him Mr. Hillman had a number of well-trained and able assistants, men and women who could organize campaigns, raise funds, and publicize plans and ideas. Various affiliated unions loaned members of their staffs to make this joint enterprise a success.

Before a House Committee that was investigating P.A.C.'s activities, Sidney Hillman clearly set forth the purposes of the new organization. Organized labor, he said, has always recognized that collective bargaining alone was not enough to protect and promote the welfare of workers but that efforts in the political field were also necessary. The C.I.O., he continued, was neither interested in partisanship nor in the establishment of a third party which might "divide rather than unite the forces of progress." The Committee sought to influence "the thinking, the program, and the choice of candidates of both parties."

In carrying out its avowed purpose the Political Action Committee uses three methods. First is an attempt to bring the issues which face the nation and the world to the attention of the American people. Pamphlets, radio programs, conferences, and speeches were used in the 1944 campaign, for example, to bring before the voters the C.I.O.'s ideas with respect to postwar full employment. More recently labor's fight for an amendment to the Fair Labor Standards Act has been well publicized as have other C.I.O. political aims.

Most spectacular of the Committee's methods is its plan to get out the vote. Believing that "on those occasions when the democratic process failed to return a progressive verdict, it was because too few Americans participated in rendering that verdict," the Committee bends every effort to increase the number of registered voters. The third phase of the Committee's activities is "to bring to the American people the record of the candidates who solicit their support, to assist them in using their ballot intelligently and effectively." At the congressional hearing, Mr. Hillman explained that the C.I.O. has no purge list nor do the national officers attempt to impose their will on local organizations. Each local C.I.O. group, after considering all the facts, can endorse whatever candidate it sees fit.

The money for the P.A.C. came from two principal sources. C.I.O. affiliated unions up to November, 1944, gave \$671,000. Because there was some legal question concerning the use of this money in a political campaign,<sup>6</sup> the committee turned for additional funds which could be spent without restrictions, to the members of C.I.O. Unions. Chiefly from these

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<sup>6</sup> A provision of the Smith-Connally Act made contributions by unions to political parties illegal.

individuals another \$418,000 was collected. By November, 1944, a total of \$797,000 had been spent.<sup>7</sup>

As part of its work, the Committee published a great number of pamphlets, leaflets, posters, and news letters. These publications ranged from leaflets discussing some special problem in the 1944 election to elaborate pamphlets replete with cartoons and photographs and designed to set forth P.A.C.'s program, such as "Jobs for All After the War" or to instruct campaign workers in the arts of their new work, such as the Radio Handbook and the Speakers Manual. During the campaign of 1944 the Committee's workers were not content to distribute literature but in many places concentrated upon getting people to register and vote. The printed handbooks gave explicit directions to campaign workers on the subject of ringing door bells to get the voters interested in the campaign and its issues.

The Political Action Committee seemed to have accomplished a great deal by using the standard campaign methods. Over 60,000,000 people, out of a potential 88,000,000 voters, registered to vote, which was a larger registration than in 1940. The Committee takes considerable credit for this increase and the fact that nearly 50,000,000 people voted. Many of the candidates supported by the P.A.C. won, but as Mr. Gaer states, "it (the P.A.C.) failed in its efforts to retire such isolationists as Robert Taft, H. Alexander Smith, and Clare Luce."

After the presidential election was won it became clear that, as Mr. Hillman had promised, the P.A.C. was not going to disband or even to relax. It is now recognized as one of the most powerful pressure groups in the country, its weight being especially heavy in Washington. Within the C.I.O. itself the committee's work has also proved highly effective in unifying and educating the members. From the point of view of the C.I.O., the P.A.C.'s brief history has been successful, and its future looks bright.

#### LEGISLATIVE POLICY

##### (a) *Collective Bargaining Preferred*

In considering the legislative policy of organized labor, as in considering its other policies, particular attention is given to the two national federations of labor unions, the American Federation of Labor and the Congress of Industrial Organizations. The reason for this is that these federations are generally accepted as the spokesmen for organized labor in America. Several facts should be kept in mind in this connection, however.

<sup>7</sup> Joseph Gaer, *The First Round* (Duell, Sloan and Pearce), p. 181.

One is that there are minorities in both groups which do not subscribe to the various official policies. Another is that there are a number of unions not affiliated with either federation, notably the railroad brotherhoods. It should also be kept in mind that organized labor as a whole constitutes only a small percentage of the total number of workmen in the United States, despite the fact that the C.I.O. now speaks for many millions of previously unorganized workers. The first convention of the Congress of Industrial Organizations, it will be remembered, was in 1938 and its political program, until recently, has not been well formulated.

As a result of labor's experience with legislation, it has worked out a policy toward the three matters lying closest to its heart—wages, hours, and working conditions. Improvements in these directions organized labor prefers, on the whole, to obtain by means of collective bargaining rather than by means of legislative action. This does not mean that legislation is excluded entirely. Such things as first lien on property for working men, payment in truck, and the company store system have been felt to have been appropriate matters for legislation to deal with. Except in special cases, until recently, the Federation, and trade unionism in general, has turned to collective bargaining in its struggle for better wages and shorter hours.

In seeking the chief reasons for this we come first to the working-man's fear that a legal minimum wage, which in his opinion would never be very high, would tend to be the maximum. Secondly, although the law may be all right to help out those who, because of special weaknesses in bargaining power, are unable to obtain the minimum wage for themselves, it has not been regarded by the Federation as a suitable method for able-bodied men occupying a strategic position in the industrial organization. Experience has also demonstrated that it is one thing to get a law enacted and quite another to get it enforced. Furthermore labor had often found itself practically helpless when powerful employers, while managing to stay within the letter of the law, and sometimes not even doing that, had clearly violated its spirit. Not so when collective bargaining was relied upon; for if a union is strong enough to wrest an increase in wages from the employer, it is strong enough to demand that the increase be paid and that the employer live up not only to the letter of his agreement but also to its spirit. If he fails to do this, the union will bring to bear the same power that obtained the original concession.

With regard to hours, organized labor has until recently followed the same policy, although with less consistency, for in this department it has deviated at times from a strict policy of collective bargaining. On various occasions it has supported state movements for the eight-hour day. The railroad unions gladly accepted the Adamson eight-hour law, and the

Federation supported it too. Yet, on the whole, labor has exhibited a marked preference for collective bargaining as a means of obtaining shorter hours.

Like everything else, the political policy of the Federation was affected by the depression and New Deal legislation. The Federation and later the C.I.O. helped in securing the passage of the Social Security Legislation and the Wage and Hour law, two ventures into social legislation that the Federation of a few years ago would probably have felt to be an unwarranted interference.

The C.I.O.'s Political Action Committee has recently adopted a legislative program for 1946. Covering the fields of both foreign and domestic affairs, this program is designed to provide a "firm foundation for stable peace, full employment, greater security and wider democracy for our nation." In domestic affairs the P.A.C. urges the passage of the Wagner-Murray-Dingell Health Bill, a bill providing for a 65 to 75 cent minimum wage, a federal housing bill, and numerous other specific pieces of legislation designed to carry out what the P.A.C. calls the "Roosevelt Economic Bill of Rights." In the field of foreign affairs, P.A.C. urges full support for the United Nations, the quarantining of Spain and Argentina as fascist nations, and a number of other international actions. The program for 1946 is comprehensive and covers support for most liberal proposals before Congress.<sup>8</sup>

*(b) Legislation Necessary to Effective Use of  
Collective Bargaining*

Since the Commonwealth v. Hunt decision in 1842, labor organizations themselves have been considered legal. It is for the purpose of "securing the largest degree of freedom to exercise the normal activities of the workers for economic betterment" that the union has been forced to take an active part in politics. The union leaders are undoubtedly right when they insist that with industry organized as it is at the present time, the right to strike is absolutely essential to the union's existence. Yet its coercive policy—the strike, the picket, and the boycott—has come into conflict with the court on numerous occasions. Is the coercive policy legal? The courts have been divided in their decisions. The strike may be legal or not, depending upon whether it is a strike for higher wages and/or shorter hours, a closed shop strike, or a sympathetic strike, and whether it was carried on in New York or Massachusetts. With regard to picketing, the United States Supreme Court has held that while peaceful picketing is lawful,<sup>9</sup>

<sup>8</sup> *CIO News*, vol. 9, No. 17, April 22, 1946.

<sup>9</sup> *Lenn v. Tile Layers Protective Union*, 57 Sup. Ct. 857 (1937).

all mass picketing is unlawful and no state can pass a law to legalize it.<sup>10</sup> The boycott has for some time been in disfavor with the courts, and especially since the famous Danbury Hatters Case<sup>11</sup> of 1908. Some of the courts have distinguished between primary and secondary boycott, the latter resulting from labor's combining with a third party.<sup>12</sup> It has been clearly the practice of the courts to declare the secondary boycott illegal.

At many points trade unionists have come into contact with arbitration of various kinds, one of which—compulsory arbitration—they feel to be quite a hindrance to the carrying out of their program, believing that it deprives them of their essential weapons, particularly the right to strike.

Probably the most dangerous form that government interference has taken is the injunction. Although not unknown in earlier decades, it was in the nineties that the injunction first came into prominence as a menace to the trade union. During the Pullman strike of 1894 many sweeping injunctions were issued, the most famous being that which resulted in the Eugene Debs contempt case. Ever since then the injunction has been used on a wider and wider scale, until it came to be feared by labor as one of the deadliest weapons it had to face and a most serious obstacle to the development of trade unionism. Some students are inclined to believe that labor somewhat exaggerates these dangers, but the fact is that for the past quarter of a century they have loomed large in the trade-unionist's thinking, and the upshot of this thinking has been that the injunction has been fought with all diligence.

The judge who issues an injunction in a labor dispute is a marked man from that time forward. The difficulty is that labor's opposition has had no great effect upon federal judges because federal judges are appointed and not elected. It is not surprising, therefore, that the federal judge has been the worst offender. At one time William Howard Taft was known as "the injunction judge," but that did not prevent his elevation to the highest judicial office in the United States.

Not satisfied with trying to punish injunction judges, labor has constantly striven to modify the law so as to prevent the injunction's being used to interfere with the carrying out of the trade-union program. For the last twenty-five years, abolition of the injunction in labor disputes has been uppermost among the demands made by organized labor in the various lists of grievances which it has presented to the political parties. At one time

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<sup>10</sup> *Truax v. Corrigan*, 257 U. S. 312 (1921).

<sup>11</sup> *Loewe v. Lawlor*, 208 U. S. 274, 28 Sup. Ct. 301 (1908).

<sup>12</sup> John R. Commons & John B. Andrews, *Principles of Labor Legislation* (Harper & Brothers, 1936), pp. 390-403.

labor seemed at last to have won its heart's desire. In 1914 it succeeded in getting an anti-injunction clause incorporated in the Clayton Act, and a number of states followed suit with laws practically duplicating this clause, but labor's rejoicing was short-lived. It was not long before the courts began to interpret the acts in such a way as practically to nullify them. Labor had to begin all over again, and it was not until 1932 that Federal relief was obtained in the shape of the Norris-La Guardia Act, which prohibited the use of injunctions in labor disputes except in accordance with clearly defined rules. The interpretations of this law by the Courts have brought relief from the use and abuse of the injunctions by federal judges.

In 1908 the Danbury Hatters' case brought grief anew to the trade unions in the form of a United States Supreme Court ruling that a trade union, although not incorporated, was subject to the antitrust laws of the United States. Ultimately, in this instance, triple damages of \$240,000 were assessed against the members of the union. Although organized labor had not hitherto been absolutely sure of its right to exemption from the antitrust laws, it had received no definite information to the contrary, and the Danbury case brought its hopes in that direction to an abrupt termination. A new menace was at hand and organized labor began without delay to seek ways of removing it. Again victory seemed to have been won in the shape of the Clayton Act. Then in 1922 came the *Coronado* decision which held that although unincorporated, unions are in many respects like corporations, and are therefore liable for damages, including triple damages under the Sherman Act, which are collectible from union funds. More recently, however, the decisions of the Supreme Court on cases brought under the Sherman Act by Thurman Arnold, formerly of the Attorney General's office, have seemed to offer immunity to labor from the anti-trust laws so long as labor is carrying on its ordinary functions.

Thus organized labor has learned in the hard school of experience that it cannot stay out of politics even though it wants to. Labor has found that it cannot confine its efforts to carrying on collective bargaining, which it vastly prefers to political activity, because collective bargaining itself is dependent upon favorable laws and upon favorable interpretations of the law by the judiciary. Hence national and state federations of labor have been forced to turn much of their energy into an effort to obtain such laws and such interpretations.

One of the great gains in labor legislation has, of course, been the National Labor Relations Act. In legally protecting labor's right to organize and bargain collectively, that law has gone a long way in effecting gains by collective bargaining.

*(c) Special Legislation*

Organized labor has also found it necessary, or at least advisable, to seek legislation with regard to special matters that are too general for satisfactory control by collective bargaining. These have to do largely with safety, sanitation, disease, accident compensation, competition of immigrant and convict labor, and the establishment of employment agencies.

Labor has not to any large extent initiated the various movements for safety and health protection, these having been started and promoted for the most part by humanitarians and various humanitarian agencies, among which the now defunct American Association for Labor Legislation was particularly prominent. Organized labor has not exactly withheld support but has merely been somewhat incoherent and somewhat inconsistent about giving it. On behalf of workmen's compensation, for example, a form of labor legislation which has expanded rapidly and has taken on great significance, labor has been very active indeed; whereas with regard to safety laws it has veered from seeming indifference to mild interest and back again. The original Federation of Organized Trades and Labor Unions placed three planks in its platform concerning safety legislation, and the A. F. of L. rather spasmodically kept up the agitation. In the case of workmen's compensation, not only was a demand for an employer's liability act recorded by the original organization, but it has been reinforced by a number of resolutions indorsing workmen's compensation that have been adopted at various times since.

Quite different from its attitude toward workmen's compensation has been labor's position regarding old-age pensions and health and unemployment insurance. The Federation did, to be sure, give its approval to mother's pensions and demanded pensions for those in government service, but in general, until recently, it objected to any kind of compulsion in the matter of insurance. Concerning compulsory health insurance and old-age pensions it stated, "It is very significant of the attitude and policy of those who have legislation of this class in charge that the measures they have drawn up were formulated without consultation with the wage earners and introduced in legislatures with professional representatives of social welfare as their sponsors. The measures themselves and the people who present them represent that class of society that is very desirous of doing things for the workers and establishing institutions for them that will prevent their doing things for themselves and maintaining their own institutions. . . .

"It is something not yet generally understood how essential it is for the labor movement of our country to maintain the fullest freedom of normal activities and [remain] free from supervision, censorship, direction and and control of government agencies." <sup>13</sup>

In the early 1930's the Federation changed its attitude toward health insurance. At its 1934 convention the Federation adopted a resolution endorsing social insurance in general and calling for a study of health insurance. In 1935 the convention urged the enactment of "socially constructive health insurance legislation through Congress and the individual states." <sup>14</sup>

The Congress of Industrial Organizations has also adopted health insurance as part of its legislative program.

A definite change has also taken place with regard to old-age pensions. After having been opposed to such legislation for years the Federation right-about-faced in 1923 by declaring its approval of the principle of old-age pensions and directing the executive council to make an investigation. In 1929 the latter reported to the convention as follows: "We reported last year that six states and the territory of Alaska had pension plans. Since that report another state has enacted pension legislation. However, some of these laws leave the establishment of the necessary provision optional with counties. We, therefore, recommend compulsory laws. . . ."

"We believe that in the coming year, a model compulsory old-age pension law should be drafted by the Federation and recommended to state federations of labor as a matter of first order of importance. We should then inaugurate an active campaign for the enactment of such laws in every state." After some vigorous debating in which many opposed the Federation's going on record in favor of old-age pensions, the convention adopted the resolution." <sup>15</sup>

At their 1941 conventions both federations called for an extension of the coverage of the present systems of old-age pensions and insurance. The Political Action Committee of the C.I.O. pledged its support of the Wagner-Murray-Dingell bill in 1945.

With regard to unemployment insurance the Federation stood firm until 1932. The executive council, which but two years before had decisively rejected such a proposal, then instructed President Green to draw

<sup>13</sup> American Federation of Labor, *Proceedings*, 1916, pp. 144-145.

<sup>14</sup> American Federation of Labor, *Proceedings*, 1935, p. 593.

<sup>15</sup> American Federation of Labor, *Proceedings*, 1929, pp. 50, 258-263. This action refers to old-age pensions paid from taxes rather than to compulsory contributions from employers and employees on a pay-roll basis for old-age annuities.



up a state unemployment-insurance plan and submit it to the 1932 convention. This was done and the convention approved it.

At the present time the Federation and the C.I.O. both are urging a federal system of unemployment compensation as against the existing state and federal system. As was mentioned earlier,<sup>16</sup> the P.A.C. is actively supporting the enactment of additional unemployment compensation benefits to those workers already covered, and is advocating extension of these benefits to nonprotected groups.

It must not be thought that the A. F. of L. went uncriticised in its earlier general policy toward the various forms of social insurance. The more liberal and the more radical labor leaders both within its ranks and on the outside bitterly assailed what they termed the reactionary policies of the Federation. They charged that while such policies might do well enough for the highly skilled laborers, they were entirely unsuited to the great mass of unskilled and semiskilled laborers who could not bargain effectively for themselves. This great mass, the critics contended, was bound to bulk larger and larger in comparison with the highly skilled class as the machine took more and more complete control of the situation.

Organized labor has also favored legislation concerning employment agencies. Recognizing the evils of private enterprise in this field it has not only supported regulative legislation, but more particularly has desired that the government should itself establish agencies.

Two of the most important matters upon which organized labor has taken a stand are the use of convict labor and the restriction of immigration. One of the planks of the platform adopted at the 1881 convention stated: "That it is hereby declared the sense of this Congress that convict or prison labor, as applied to the contract system in several of the States, is a species of slavery in its worst form; that it pauperizes labor, demoralizes the honest manufacturer and degrades the very criminal whom it employs; that, as many articles of use and consumption made in our prisons under the contract system come directly and detrimentally in competition with the products of honest labor, we demand that the laws providing for labor under the contract system herein complained of be repealed, so as to discontinue the manufacture of all articles which will compete with those of the honest mechanic or workingman."<sup>17</sup> A similar demand was incorporated in the bill of grievances issued in 1906. At first the Federation made little progress in obtaining laws to restrict the competition of convict labor, this

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<sup>16</sup> See p. 263.

<sup>17</sup> Federation of Organized Trades and Labor Unions of the United States and Canada, *Proceedings*, 1881, p. 3.

being, according to its own statement in 1916, the only item in the 1906 bill of grievances concerning which no appreciable betterment had been brought about by means of legislation. At present, federal and state laws have been enacted which have substantially reduced the competition of free workers with the workers in penal institutions.

The problem of immigrant competition is unique to American labor. No other group of workers in the world has had to meet immigrant competition on a scale nearly so vast. Hence the Federation has supported any and all legislation having as its purpose the restriction of immigration, and its unremitting efforts in this direction seem at first sight to have achieved a signal triumph in the legislative field. It is impossible to determine, however, just what share of credit the Federation can rightly claim for the restrictive legislation which has been passed. At any rate, the laws are on the books and are very advantageous to labor, and this is undoubtedly due in part to the Federation's influence.

#### *(d) Legislation for Special Groups*

Organized labor has recognized that, although collective bargaining is on the whole more effective than legislation as a means of carrying out its chief economic aims, there are certain groups which, for one reason or another, cannot very well do their own bargaining. As a means of improving the economic condition of these groups, the Federation has favored legislation. There are four main groups that so far have been unable to bargain effectively for themselves: children, women, seamen, and public employees. It is not to be gathered that the interest of organized labor in these groups has been entirely altruistic. Like other human beings the trade unionist cherishes kindly sentiments toward his fellows, but his active interest in obtaining favorable legislation for these weaker groups is probably ascribable in some measure at least to his desire to eliminate undesirable competition.

The Federation has from the beginning been very positive and very definite in its opposition to child labor, strenuously supporting prohibitive and restrictive legislation, and manifesting the keenest displeasure when the Supreme Court has declared child-labor laws unconstitutional. It has been less active in its support of legislation to protect women workers, in part because of some indecision as to whether the women could not obtain more by collective bargaining than by legislation. At times the Federation has seemed to favor protective legislation for women and at other times has been unwilling to take definite action in the matter. The tendency seems

to be more and more to favor organization among the women workers. In its 1913 convention, for example, just after the enactment of the Massachusetts minimum-wage law, the executive council of the Federation, while admitting the advisability of such laws in certain circumstances, went on to say: "If it were proposed in this country to vest authority in any tribunal to fix by law wages for men, labor would protest by every means in its power. . . . The principle that organization is the most potent means for a shorter workday and for a higher standard of wages applies to women equally as to men." Although the council criticised the Supreme Court's decision in the 1923 District of Columbia minimum-wage case, it stated that "the A. F. of L. has consistently maintained that the only agency in which wage-earning women could place absolute confidence is economic organization." Since the Supreme Court's approval of minimum wage laws, organized labor's position has changed substantially on this matter.

Seamen have been particularly subject to circumstances that destroy bargaining power. For years a strike on the high seas was legally regarded as treason and the breaking of a contract as desertion. This made collective bargaining practically impossible. The Federation has strongly supported legislation improving these conditions as well as others, and undoubtedly deserves some share of the credit for the passage in 1915 of the La Follette bill, which removed the traditional implications of the strike and the breaking of contract at sea. Government employers, who are not permitted to strike, are somewhat similarly situated. Lacking this right they cannot bargain for themselves and must depend upon protective legislation. This the Federation has recognized, and it has at all times fought vigorously for measures which would better the lot of government employees. Some headway has been made, but the progress has not been rapid enough to satisfy those who look to the government to lead the way in the improvement of social conditions.

#### INDEPENDENT POLITICAL PARTY

One of the great points of divergence between the labor movement in the United States and the labor movement in Great Britain is that in the latter country the labor group has formed an independent party. Not only does such a party exist, but at three different times it has constituted His Majesty's Government. Many are disposed to conclude that American labor has been backward, lacking intelligent guidance, shortsighted. To these accusations the American leaders retore that their methods have brought results. They point to the relatively high wages received by Ameri-

can organized labor and feel that in so doing they have vindicated themselves. The question naturally arises: why this difference? Why is there nothing in the United States comparable to the British labor party?

With few exceptions the official policy of the American Federation of Labor has always been one of nonpartisan political activity. A convention of the Federation has declared: "That the American Federation of Labor most firmly and unequivocally favors the independent use of the ballot by the trade unionists and the workingmen, united regardless of party, that we may elect men from our own ranks to make new laws and administer them along the lines laid down in the legislative demands of the American Federation of Labor, and at the same time secure an impartial judiciary that will not govern us by arbitrary injunction of the courts nor act as the pliant tools of corporate wealth."

Though at times the Federation has seemed to depart from what may be termed nonpartisan political action, on the whole it has followed its declared policy very consistently. It has firmly maintained that it would use the vote for principles and for men rather than for party. Many attempts have already been made to organize a separate party when the Federation came on the scene, and all of them had failed. In the early days of the Federation's life there was much agitation within its own ranks for political action, and politics did occupy much of its attention in the beginning. But as time went on, the non-partisan policy became more and more firmly entrenched in its general program; and as we examine the economic and political structure of the country, we shall see that up to the present at any rate, the Federation (and organized labor in general) has been adapting itself pretty accurately to its environment in following this policy.

The C.I.O. at its first convention commended the function of Labor's Nonpartisan League, an organization outside the A. F. of L. and C.I.O. but under the leadership of John L. Lewis. The League contributed toward the re-election of Roosevelt in 1936, but, according to a C.I.O. critic, it "fell from the start into a grave error. Though it strove to plant its trees throughout the nation, it nevertheless insisted that the seedlings must all come from one hothouse in Washington—John L. Lewis' hothouse."<sup>18</sup> In 1936 the American Labor Party was organized in New York and supported Governor Lehman and President Roosevelt. It is not a national political party but restricts its activities to New York State. Likewise, it seldom runs candidates for office but endorses candidates of the other parties. During the 1942 campaigns the American Labor Party did present its own candidate for governor who ran a poor third. As

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<sup>18</sup> Joseph Gaer, "The First Round" (Duell, Sloan & Pearce, 1944), p. 53.

discussed earlier in the chapter, the C.I.O. Political Action Committee in 1944 brought out millions of votes for Roosevelt, helped to elect a number of candidates, and to defeat others. It should be stated again, however, that throughout the brief history of the P.A.C. its chairman has consistently maintained that no third party is planned.

*(a) Influence of Economic Conditions*

Economic conditions have differed greatly between the United States and Great Britain. An outstanding characteristic of our own system has been the possibility and even, in many cases, the probability of workers passing from one economic class to another. In England the different economic classes are more definitely fixed and the barriers have risen so high that it is exceedingly difficult to scale them. Conditions among our own laborers have never touched bottom over large groups as they have in England. Our industrial revolution brought no such misery and degradation as followed in the wake of Great Britain's. This was due in part to the fact that we were able here to anticipate the development of manufacturing and after a fashion to prepare for it, and in part also to the presence of an alternative, that of going to the land. Of the two, the latter is the more important reason; indeed the most significant factor in differentiating the economic conditions of the two countries has probably been the relative abundance of land in the United States, coupled with our system of land tenure. This has not only enabled some laborers to take up land and become small land-owners and farmers, but has also made it possible for those remaining in industrial work to improve their position.

The economic situation can make or mar a labor party. Essential to a successful labor party is a well-developed class consciousness, a unity of purpose among the laborers. Now if it is possible, or what is more important, if the laborer himself thinks it is, to climb to a higher economic level, he will not want to unite with the members of his present class to wage political warfare against the other classes. The American laborer is quite apt to find no fault with the capitalist as such for the very good reason that he dreams of becoming a capitalist himself sometime. It is only when he has resigned himself to permanent membership in his own class that he is able to feel class consciousness.

An economic system like ours, or at least such as ours was formerly, in which a man can climb to a higher class, is perfect soil for the growth of an individualistic philosophy. A man rises by his own efforts and consequently he does not look to the state for aid. This being true, he is not likely to be interested in organizing and supporting a political party. Individualism is

found not only in the mind of the particular laborer, but may dominate the organized group as well. The skilled craftsmen organize to help themselves and they are not particularly concerned to help the unskilled. Let these also organize if they are dissatisfied. This attitude has been strengthened in the United States by the fact that our industrial development has lagged behind England's, enabling the craft organizations to hold on longer than would otherwise have been possible. As long as craft unions are in the saddle, little organizing will be done among the unskilled and a labor party will develop slowly.

The absence of a labor party may also be traced in some part to the fact that, owing chiefly to the relative abundance of her natural resources, America has for many years offered alluring prospects to the workers of foreign countries. As long as the immigration bars were down, these foreign laborers flocked hither in great numbers, bringing to American labor such dissimilar elements that frequently among those employed in a single plant a number of different languages would be spoken. It is, of course, impossible to weld into a permanent political party any but a rather homogeneous group; and the American working class, representing so many different viewpoints, backgrounds, and languages, is obviously poor material out of which to build a labor party or any concerted movement such as cooperation.

#### *(b) Influence of Political Institutions*

Quite as important as our economic peculiarities in determining the political policy of organized labor in America have been our political institutions. Although these have largely an English ancestry, they are markedly different from the English political institutions. A most significant difference appears in the functioning of the judiciary. The American Congress enacts a law. It is challenged, and the case is taken to the courts and finally to the Supreme Court of the United States. This highest court has to perform two functions. In the first place it has to determine the meaning of the law as enacted. What did Congress have in mind in passing it? Did the defendant act in such a way as to violate the law as thus interpreted? In the second place it has to determine whether or not the law as so interpreted accords with the written constitution of the United States. If it deems that it does not so accord, then the law is declared to be invalid. In that event, unless the constitution can be appropriately amended, Congress will henceforth be barred from passing laws which in matter and manner are like the aforementioned enactment.

Very different indeed is the procedure across the water. Parliament enacts a law and it is challenged. If the case reaches the highest court, that body is called upon only to determine what Parliament meant by the law and whether or not the defendant violated it as so interpreted. The latest enactment of Parliament is final, superseding all previous enactments.

The difference just outlined is heavy with significance to the respective labor groups. It means that in this country legislation, particularly social legislation, is a precarious method of benefiting labor; and the corollary to this is that an independent political party becomes of very doubtful value. Law making in the United States is a difficult business. When Parliament enacts a law, that is all there is to it. When the American Congress enacts a law, it must be able to stand the test of interpretation by the courts.

If it is hard in general to carry laws through to completion, thorniest by far is the path of the "social" law; for more significant even than the necessity of hurdling the final barrier is the nature of that barrier. The Constitution of the United States was written at a period when individualism and *laissez faire* held the stage and it is saturated with this type of philosophy. It was the handiwork largely of propertied men who were not unmindful of their own material interests as they wrote, and who gave property rights the preference over personal ones. Add to this the well-known fact that, on the whole, American judges, in the last half century at least, have been very conservative in permitting the legislative bodies to invade the province of economic freedom, very careful to preserve property rights even though personal rights might have to suffer, and you will perceive why legislation calling for governmental control of economic activity, and in particular for governmental protection of personal interests, has had a hard row to hoe.

The nature of the constitution and the conservative bias of the courts are no mean obstacles to overcome. Organized labor in seeking to further its own economic well-being has found them too big to combat and has given up the attempt except when it has been absolutely necessary in order to safeguard its preferred method, collective bargaining, or to protect certain special groups which cannot bargain for themselves, or to serve certain special purposes which would otherwise be unattainable. Now if it is obvious that satisfactory results cannot be obtained through legislation, why expend the requisite amount of energy to form a party for legislative purposes? Thus reasons organized labor.

The specter of unconstitutionality is not the only one to stalk the path of the law seeker in the United States. When Parliament enacts a law,

that law becomes the law of the entire land, and so English labor can bring its whole fighting force to bear upon one front. In the United States, on the other hand, not only does Congress legislate but so also do the forty-eight legislatures of the forty-eight states, and to these fall most of the matters dealing with labor. The difficulty of fighting along so many fronts is aggravated by the element of competition which enters. Immediately a state enacts an hour law, the employers of that state are placed at a competitive disadvantage with relation to employers manufacturing the same product or products in other states. Employers are therefore going to resist the enactment of such legislation not only because of its absolute effect upon them but also because of the competitive disadvantage at which they will be placed.

Furthermore in each of the forty-nine legislative units power is divided between the executive and the two houses of the legislature. This splitting up of sovereignty by means of checks and balances is a very good arrangement for those who wish to maintain the status quo, but for those who desire a change it has corresponding disadvantages. A labor party would naturally fall in the latter class.

In England the executive is virtually chosen by Parliament and is largely dependent upon Parliament for continuance in office. In the United States the executive is elected by the entire people and is therefore not subject to control by the legislature. This is very dispiriting to the potential minority party because by the very nature of our system the American executive can represent but one party. The English cabinet system permits different shades of opinion to be represented in the executive branch of the government, although all are nominally within the same party. Indeed the party in office oftentimes remains there only with the support of a minority group, which on occasion can effectively demand the passage of certain measures in return for its support. Hence at times minority groups wield a power out of all proportion to their number and are thus encouraged to organize and develop. This point is well brought out by the sharp-eyed author of *Behind the Mirrors*: "Groups will not be able in this country as in Europe to elect members of the national legislature independently and then form a combination and pick their own executive. They are under compulsion to elect the executive at large by votes of the whole people. They must hold together enough for that purpose. The centrifugal tendency of minorities in the American system is thus effectively restrained. Groups must work within the parties, as the agricultural bloc has done and as the proposed workers' bloc promises to do."<sup>19</sup>

<sup>19</sup> C. W. Gilbert, *Behind the Mirrors* (Putnam, 1922), pp. 215-216.



Another factor discouraging to the development of minority parties in this country is the absence of proportional representation. It is quite possible for a third party to secure as many as a million votes (the socialists often poll a large number of votes), without obtaining a single voice in the government. The somewhat grotesque potentialities of our system were demonstrated in the presidential election of 1944 when the Republican candidate, Thomas Dewey, gained no more voice in the government than a private citizen although he received more votes than Mr. Coolidge, the successful Republican candidate, had polled in the 1924 election. In England, as official leader of the opposition, he would have been a powerful figure in public affairs. Mr. Dewey represented our second major party. What, then, are the possibilities in store for the representative of a third party? Hardly sufficient to warrant any considerable outlay of time, thought, money, and effort. It is easy to see why labor has generally refrained from "throwing its vote away" on a third party man, since, moreover, this would operate to help elect the more conservative of the two leading candidates. On the whole, labor's best bet has been to support the less objectionable of these two men.

Dissuasive, also, of a third party in the United States are the traditions that lie behind our party system. Our major parties arose before there was any great question of capital versus labor. They are aware that on the whole Americans prefer to believe that there are no classes in this country, and consequently have seldom tried to emphasize class interests. Such attempts as have been made have been branded as undemocratic and un-American, and all one-hundred-per-cent citizens have cried out in protest against any move to incite class feeling.

Hence the Republican Party does not claim to represent the property interests or the employer interests. Although at times the Democrats have bid for the so-called labor vote, they have made no serious attempt to represent one class interest as against another. They have pretty consistently bid for the votes of all classes. In the 1928 campaign Mr. Smith, who, it was claimed, has done more for the wage earners in the state of New York than any previous governor, bid for the labor vote on the basis of that record. But at the same time he appointed to manage his campaign Mr. John Raskob, a high official in the General Motors Corporation. "There are no ruling classes in this country," he declared. "Wealth does not rule the country."<sup>20</sup> Both parties have quite steadfastly opposed the idea that classes exist; and if classes do not exist, how can political parties represent them? Roosevelt was accused of arousing class antagonisms, yet

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<sup>20</sup> *New York Times*, Feb. 10, 1928.

he was elected four times not by the votes of disenfranchised southern workers, deprived of voting by means of a 'poll tax and literacy tests, but by the combined votes of northern liberals and southern conservatives.

Parties, it is asserted, should represent principles. For example, the Republican Party has championed the principle of the protective tariff—because it would benefit not one class but all classes, particularly (lest a doubt should creep in) the wage-earning class. This espousal of the tariff has been very successful. At every election thousands of working men in Pennsylvania cast their votes for the Republican party. And at every election thousands of southern aristocrats mark their ballots for the Democratic candidate. Loyalty to party has long since taken on the character of a religion. This unreasoning devotion to the parties that now are, makes it relatively easy to forestall the development of a new party which would lift high the workers' banner. For cannot the representatives of both the Republican and the Democratic parties go to the laboring man, as indeed they have done at many times past, and say, "I stand for your interest"? Cannot they render convincing lip-service to labor planks in meaningless political platforms? Truly the way of any third party in the United States is beset with snares and pitfalls. There is apparently ample reason for the absence of a labor party in this country. Labor has tried political activities on many occasions, and on more than one of them it has burnt its fingers. It may not know just what caused the burning but it will continue to have a dread of the fire, for some time to come at least.

### (c) *Evaluation*

What are the fruits of the political policy of organized labor in the United States? That question immediately suggests another. Are they such as to warrant a continuance of that policy or such that a change is indicated? Possibly conditions have so altered as to justify a modification of the traditional policy.

Turning to the records of the Federation we find official declarations of unimpaired confidence. "As a result of the participation in the political campaign of 1906," we read, "there were elected as members of the House of Representatives, six men holding paid-up trade union cards. In 1908, the group was increased to ten; in 1910 to fifteen. In 1912 Labor secured representation in the Senate. In 1914 the labor group consisted of seventeen members of the House and one member of the Senate.

"The legislative achievements, steadily increasing for each Congress, show how the trade union movement succeeded in breaking up the Congress-

sional deadlock against labor legislation and securing laws according to them necessary freedom of action and protection." <sup>21</sup> In 1923 the policy was defended as follows: "Through the activities of the American Federation of Labor National Non-Partisan Political Campaign Committee, as directed by the Executive Council, twenty-three candidates for United States senators who had been loyal to Labor and the people were elected and eleven reactionary senators defeated. Of the friendly senators elected eighteen were democrats and five republicans. Of the candidates for representative, 170 were elected either because directly supported by the A. F. of L. national nonpartisan political campaign committee or by reason of the opposition to their opponents. Of these 105 were democrats, sixty-three republicans, one farm-labor, and one independent. The slogan that led to victory was:

"Stand faithfully by our friends and elect them. Oppose our enemies and defeat them; whether they be candidates for congress or other offices; whether executive, legislative, or judicial." <sup>22</sup>

The Federation believes that in view of the many obstacles that have blocked its path its progress has been remarkable. It emphasizes the necessity of getting "more and more now" and points to the many failures of third-party movements which have aimed at drastic and comprehensive social reforms. The average wage earner, in the Federation's experience, is not swayed by the faraway advantages of an uncertain future. He is interested in improving his own immediate economic condition. This is what he must be interested in. He therefore reserves his loyalty for an organization that aims, not at "visionary gains in the future," but at immediate gains for him. It is these practical aims at immediate improvement, with appropriate policies to carry them out, that make a successful labor organization. American organized labor has found that its aim can be best secured by means of collective bargaining, and that such legislation as is necessary to effective use of this means can be best obtained by adherence to a nonpartisan policy.

This nonpartisan policy was put to a severe test in the presidential election of 1924. In fact some observers insisted that it was practically abandoned in that campaign. This the Federation firmly denied: "In the election of 1924, as the Executive Council has declared, the 'A. F. of L. followed its traditional nonpartisan political campaign procedure.' This policy is persistently and often intentionally misstated. While it endorses no parties, it uses all. It endorses neither the two major parties nor any

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<sup>21</sup> *Legislative Achievements of the A. F. of L.*, pp. 4-5 (pamphlet).

<sup>22</sup> American Federation of Labor, *Proceedings*, 1923, p. 50.

third party. It does endorse candidates of the two major parties and occasionally of third parties, or candidates running independently." <sup>23</sup>

The Federation maintained further that its nonpartisan policy was successful even in this election, calling attention to the fact that of the 303 candidates which it endorsed for the House of Representatives 186 were elected. In justification of the Federation's refusal to support an independent labor party President Green said, "Here in America we tried the nonpartisan political program that was a very fundamental policy of our movement until the last presidential election. We departed from that temporarily and committed ourselves, for the moment at least, to an independent political party. The candidate of that party was the strongest candidate that labor could have elected, a man with a record and a history, great patriot, a man whose name was known in every hamlet, village and home in America, a man with a brilliant record in the legislative bodies of our country.

"Who could the independent political party have selected stronger and more influential than the late Senator Robert La Follette? And yet . . . the working people of America, even under our recommendation, would not go over into this independent political movement." <sup>24</sup>

The Federation's position has been attacked with especial severity by the socialists both within and without it. The Federation, they contend, has made no material progress in securing its legislative aims. They point the finger of scorn at the Clayton Act, once hailed as the Magna Charta of labor, and at other laws which have been nullified by the courts. They also claim that much of the credit for such favorable legislation as has been obtained rightly belongs to organizations which have interested themselves in general social improvement, such as the American Association for Labor Legislation. They point out that where other groups have not been interested very little has been accomplished.

"Certainly," said the leaders of the Farmer-Labor Party, later known as the Independent Labor Party, in 1920, "Mr. Gompers cannot keep a straight and serious countenance and allege that his 'political' policy has yet—fourteen years later—adjusted these grievances in Labor's favor.

"Look them over.

"You will find every one of these grievances repeated in the protestations of the A. F. of L. at Atlantic City in 1919.

"The only one that would seem to have been adjusted is the seamen's grievance, to right which the Seamen's Act was passed. But this was not

<sup>23</sup> American Federation of Labor, *Proceedings*, 1925, p. 278.

<sup>24</sup> *Ibid.*, p. 331.

due to the 'political' policy of Mr. Gompers. It was due to the efforts of Andrew Furuseth, Victor Olander, and their associates and the long, uncompromising fight of Senator La Follette. The pitiful climax of Mr. Gompers' political efforts stands forth exposed to the world in the Wilson administration. Never before had the leader of the labor movement in the United States attained such influence with the government. Never again will Mr. Gompers have so much prestige and personal entrée into a federal administration. And what did it get the workers?

"Never before has a federal administration so ruthlessly and shamelessly trampled upon the rights of the workers. Never before has the misuse of the injunction to defeat the workers been so vicious. Never before have all the powers of government been so mobilized to defeat Labor. And this has been done by the Wilson Democratic administration and the more recent Republican congress, with equal diabolical enthusiasm." <sup>25</sup>

It must be admitted that there is a great deal of truth in these charges. But before finally accepting or rejecting them, let us remind ourselves of several items which ought to be kept in mind. It is true that until recently at least, social legislation has been much further advanced in Great Britain than it has been here, but it is also true that much of that discrepancy is due to differences in political structure that have already been pointed out. It is true, on the other hand, that wages are higher in the United States. This difference, also, is not to be explained entirely in terms of the presence or absence of a labor party. When labor leaders on their part point to these higher wages as justifying their nonpartisan policy, they are overlooking a very important factor—namely, the relative abundance of natural resources in the United States. Wages of unskilled, unorganized labor are also higher here than in Great Britain, and these high rates are in no way ascribable to the wisdom of the Federation leaders in holding aloof from politics.

Any question so complicated as this of labor's participation in politics must be approached in a most cautious and tentative fashion. It is no subject for absolute and sweeping conclusions. Labor having been organized until recently chiefly on the basis of skilled crafts, its time-honored policy of preference for collective bargaining where the major questions of wages, hours, and a voice in the control of industry are concerned, would seem to have been a wise one. In the past few years, however, the C.I.O. has become acutely aware of the advantages to be gained through active political participation, even though it does not wish to promote a labor party.

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<sup>25</sup> *The New Majority*, Feb. 28, 1920.

Both the A. F. of L. and C.I.O. have realized that however much organized labor may have desired to hold itself aloof, it could not avoid entering the field of politics. Labor had to engage in some kind of political activity even to execute its policy of collective bargaining. Only by such activity has labor gained the protection of the National Labor Relations Act, and only by continued activity will it be able to keep the gains it has made. Organized labor has discovered also that a group of questions vital to it, such as social insurance, can be dealt with only through political action.

There is the considerable possibility that although the nonpartisan policy of the Federation has been sound in the past, conditions have so changed as to demand that it be modified. Exceedingly significant in this connection is the ever more important part which the government is playing in economic life. No longer do individualism and *laissez faire* hold sway. Social control has so far invaded industry that proposals for government ownership of railroads, water power, and coal mines, instead of being airily dismissed as "socialistic," are nowadays discussed in all seriousness as policies entitled to a sympathetic hearing. If the government, then, is becoming more and more active in the economic life of the day, organized labor must, willy-nilly, come more and more into contact with it. As these enforced contacts multiply, labor may find that its interests can best be served by a political party definitely committed to the purpose of making them profitable.

In the past, labor has not had the strength to serve two masters. To have gone strenuously into politics would have meant the giving up of collective bargaining. Probably this is not true today. Organized labor is strong enough so that it could probably participate actively in politics while continuing to rely upon collective bargaining for the attainment of its fundamental aims.

The face of industry itself has so altered during the last quarter of a century that many of the factors tending to develop a strong, compact group of laborers at the top are no longer determinative. It is also no longer more than theoretically possible for wage earners to move out of their class on any large scale. Wage earners they are, and wage earners most of them are destined to remain. Within the class, the barriers which have separated skilled, semiskilled, and unskilled laborers are being broken down, if not quite obliterated, by the machine. The strengthening of the walls which stand between the laboring class and other classes, and the demolition by the machine of those walls within the class which have divided the different groups of workers one from another, are forces which will act more and

more powerfully as time goes on to produce that class consciousness which is the foundation of successful political action.

Past ventures into the political field have failed, it is true. But in the beginning and for many years thereafter there were no strong, highly organized bodies such as the American Federation of Labor and the Congress of Industrial Organization to back these ventures up. Today labor is much better organized. It has a rich fund of experience, successful and otherwise, upon which to draw in the event it should decide to form a party.

It seems unlikely, however, even with its new strength, that labor will attempt to form a party of its own. The recent statements of the A. F. of L. and the C.I.O.'s Political Action Committee indicate rather that labor will, for a time at least, continue to "support its friends and defeat its enemies" within both the Republican and the Democratic parties.

## CHAPTER XI

### WORKERS' EDUCATION

EDUCATION is a favorite panacea for all of society's ills. To the popular mind the word carries a sort of magic; education is the open sesame to culture, to wealth, to social prestige, to all that the human heart craves. Looked at more broadly, it is the great hope of civilization and so, sooner or later, education insinuates itself into all "movements."

The term is so comprehensive that it is rather difficult to fix the date when education first made its appearance in the labor movement. In a very real sense the training in trade-union tactics which comes from active participation in union activities constitutes education and certainly the learning of a trade must be so classed. Interpreted in this way education has always been present in the labor movement. We shall confine ourselves in this chapter to the deliberate and systematic attempts of labor organizations to use education as a means of awakening in the laborers a consciousness of their own powers for the purpose of making them a more potent force in improving their economic and social position. Workers' education in this more limited sense is relatively new. In the United States trade-union organization has been in use for a hundred years as a method of improving the worker's lot and political activity has been experimented with for about the same length of time. The possibilities and the limitations of these methods have gradually made themselves apparent, at least to some degree. But only within the last few years has labor turned to education, and the time has been altogether too short to reveal what possibilities it holds for labor's advancement and what its limitations are. Thirty-five years ago workers' education as a conscious movement did not exist.

Because of its newness and because of the rather formless and confused state which that newness implies, no methodical treatment of workers' education is possible. The most we can do is to examine the trends that have manifested themselves thus far and to raise a question or two that only the future can answer.

#### WHAT IS WORKERS' EDUCATION?

Let us make sure first that we know what we are talking about. What is workers' education in the specialized sense in which we shall use the



term? Mr. Harry Laidler defines it as an attempt on the part of organized labor "to educate its own members under an educational system in which the workers prescribe the courses of instruction, select the teachers, and in considerable measure, furnish the finances."<sup>1</sup> It will be worth our while to pause over this statement for a moment. We believe that it defines essentially what workers' education as a movement has turned out to be. Some of the universities have made very praiseworthy attempts to provide facilities for the education of all adults by means of extension and correspondence classes. The workers have been eligible to enter these classes and many have taken advantage of the opportunity, but the program was not arranged primarily for their benefit nor were the teachers selected primarily because of their special fitness to teach workers. Obviously the need for workers' education as it presented itself to the minds of trade-union leaders could not be met in this way. The girl who spoke as follows of her experience in a large evening class in the extension department of a city college is probably not untypical. "I sat through that class for eight months," she said. "I didn't have the nerve to get out, but I didn't understand one word all winter."

Then, too, the labor leaders have felt that college teachers would not only be unable to talk the workers' language but would in most cases be defenders of "capitalistic" ideas. They have felt that the classes should be taught by men and women who are in sympathy with the labor movement. In so thinking they may not be strictly "scientific"; but we must bear in mind that the purpose of the labor movement is to improve the status of the laborers and that if workers' education is to help carry out that purpose, it cannot have an altogether open mind. Labor's attitude toward the colleges and secondary schools has been vigorously stated by Mr. James H. Maurer, a labor leader prominently associated with the workers' education movement. He writes, "The suggestion of a college or university reminds the active unionist of the persecution of professors for showing too much interest in the welfare of the masses, and brings to his mind pictures of college students as strike-breakers. The college-bred labor-haters who have assumed the 'patriotic' duty of helping to break railroad and street car strikes are products that American colleges like to boast of. President Eliot once said, 'Such scabs are heroes of the first order,' but insults by the 'educated' come closer home than this. The workingmen's children return from school with accounts of indictments of the labor movement made by their teachers or by

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<sup>1</sup> William Floyd (Editor), *Social Progress* (Arbitrator, 1925), p. 264.

propagandists who have been allowed to address the pupils." <sup>2</sup> Organized labor, particularly the progressive wing, has been convinced that the colleges and the public schools have discriminated against labor in many ways, that in general they are controlled by men who either belong to the employer class or are quite in sympathy with it.

Even if there were no question of discrimination, there would still remain the problem of the curriculum. The laborers have felt that their need is for a special kind of training which the curricula of the college and university extension departments have not been designed to furnish. True, some of the colleges have made a definite effort to develop suitable courses for workers—Amherst, Bryn Mawr, and Barnard have done this—but in these cases the workers themselves have been consulted concerning the type of work to be done, and the curricula embody their views to some extent.

Labor leaders were insistent that if workers' education was to fulfill its purpose, the schools would need to be under the control of the workers themselves. They considered this to be a most important requisite to success. And undoubtedly they were right. It is obvious that if a system of education is to further the interests of a particular group, the control of that system must be vested in that group. Only enterprises definitely controlled by trade unions or cooperative societies are admitted to affiliation with the Workers' Education Bureau. At one time the extension department of the University of California, which was carrying on adult education among trade-union members, sought affiliation with the Bureau and was rejected. Later when the university turned over the \$10,000 annual appropriation for this work to a committee of whom three-fifths were to be trade-union members, affiliation was granted although the committee engaged as director the very same man who had served in that capacity under the university. This does not mean, of course, that the workers will have nothing to do with enterprises that are not under their control. They have cooperated with a number of such schools, but their aim has been to bring under their control all educational enterprises that were distinctly for the workers.

During its earlier history workers' education was financed meagerly through the combined efforts of the communities and a few of the trade unions. More recently funds have been available from W.P.A. allocations. Even more significant is the fact that some of the larger trade unions

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<sup>2</sup> J. H. Maurer, "Labor's Demand for Its Own Schools," *Nation*, 115:276 (Sept. 20, 1922).

have given financial aid with some of the more progressive unions, even providing an educational staff for the aid of their locals.<sup>3</sup>

In general it might be said that there are three possible points of view concerning the aims of workers' education. The first is that the workers should be given an opportunity to obtain the culture and the background which the necessity of earning a livelihood at an early age has made impossible. This idea was probably borrowed from England. The English working man is primarily interested in obtaining a cultural education, largely because he believes that it is learning and culture that give the upper classes their power. Culture, to his mind, imparts a sort of Midas touch, and he wants this and goes after it with all the dogged persistence so characteristic of the Englishman. He will read Browning if it kills him. This aim has comparatively few supporters in the United States. It is felt that that kind of education is furnished by our public school system and that a workers' education movement has things to do which no other agency is taking care of. Reverence for culture as the magic key to success is not absent in America, however. American workmen, too, show a pathetic awe before what they feel, uncomprehendingly but with utter faith, to be the irresistible power of education.

Miss Lillian Herstein records an incident illustrating this childlike faith in the mysterious potency of learning. "I recall a workers' class in English composition, where the industrial and social experience of the student was made the subject matter of theme and speech. Matters of technique and grammar had been taught indirectly, properly subordinated to content. Quite accidentally, a question of grammar came up one evening. The teacher, much against her will, had to disgress for several minutes to explain the grammatical principle involved. 'This,' declared a middle-aged molder, 'is what we want! We want to learn this grammar business—every bit of it, so we won't be ashamed to open our mouths.' And the murmur of assent that arose from the entire class showed plainly that the speaker was voicing the sentiments of the group."<sup>4</sup>

Nevertheless it will be generally contended by its leaders that the purpose of the workers' education movement should not be to prepare the laborers to leave their own class. It is not that this is regarded as an undesirable aim for a worker to have, but the great mass of laborers cannot be lifted to another level of society by the power of education and they

<sup>3</sup> Eleanor G. Coit, and Mark Starr, "Workers' Education in the United States," *Monthly Labor Review*, 49:4-6 (July, 1939).

<sup>4</sup> J. B. S. Hardman (Editor), *American Labor Dynamics* (Harcourt Brace, 1928), p. 378.

should not be encouraged to cherish a hope which is almost certain to be shattered. The leaders are fully aware that a real problem is presented by the prevalence of this ambition, for classes in the cultural subjects are usually larger than classes dealing primarily with the social order. The problem cannot be solved simply by eliminating all purely cultural subjects from the curriculum. The worker after all is a human being, and it is a very serious question whether he should be denied the opportunity to study literature or art, especially since he may be doing it to indulge a genuine taste rather than because of an ambition to rise to a higher social class.

Most labor leaders are of the opinion that the aim of workers' education should be primarily to train the worker to be what he is, a worker, and not to become something else. Here agreement ends, and the leaders fall back into two camps. The one group, comprising the dominant element in the American Federation of Labor, believes that the aim should be to train the workers for more intelligent and efficient union membership, that the movement should take its place in the union program as a general trade-union policy. The union has certain definite objectives. Standards of living are to be maintained, wages are to be increased, the length of the working day is to be shortened, control over working conditions is to be exercised, strikes are to be conducted; and problems are continually arising in connection with all of these activities which require knowledge of industrial conditions, of trade-union tactics, of trade-union history, of trade-union organization. It is such knowledge as this that workers' education should impart.

The second of the two groups holds that the main aim of workers education should be to prepare the workers for a new social order. This aim has been so well stated by Mr. J. B. S. Hardman, a leader of the progressive labor movement who has been very active in the development of the educational program of the Amalgamated Clothing Workers' Union, that he is quoted at some length. He says, "To begin with, workers' education is not adult education. It is more than that. It is wider in scope, different, and more complicated. A university may offer extension courses in labor subjects and attract a large and almost purely working class audience. That would not be workers' education, however. Workers' unions may engage the teachers and pay the rent for the hall where labor courses are given, and even if such courses be attended by working men and women, it will not be a venture in workers' education. Not quite. Why? Because primarily the workers see in education not only what others see in it, but also a powerful means toward the end which most concerns them. That end is a change in the conditions of social living.

"The educational mills, seeking to materialize the ideas of the upholders of the present industrial regime, turn out the kind of mentality which leads toward the perpetuation of the regime and of the mechanistic civilization in which it has culminated. This is as it should be. It is good logic that each prevailing order should seek to preserve itself, but labor is not in agreement with the prevailing industrial order. Whether conservative or radical, whether unwilling or ready to force a change, labor finds fault with things as they are. Labor wants 'things' changed, and the labor ideal of education is one of education for social reconstruction and readjustment. The concomitant of the labor movement, workers' education, demands the type of education which trains such habits of mind in the workers as will help them to secure the desired changes in the social order."<sup>5</sup>

Thus the aims of workers' education may be classed under three heads: (1) to broaden the cultural outlook of the workers; (2) to increase the effectiveness of trade-union activity; and (3) to prepare the worker for a new social order. It can be accurately stated that the latter two are dominant in the United States. The first has never commanded support sufficiently fervid to make it the subject of a controversy, whereas the proponents of the other two have already clashed in a battle so fierce that it has interrupted rather seriously the progress of the movement.

A recent restatement of the functions of workers' education is found in the writings of Miss Fannia M. Cohn of the educational department of the International Ladies' Garment Workers Union. This pioneer in education for workers feels that workers' education has at least three important functions. First, it has the function of "discovering promising young people with ability to lead" and training them in their union or in the colleges, to be able to serve their union in various capacities. A second function is to train the rank and file members to make them better able to take their places in the democratic processes within the union. Finally, says Miss Cohn, workers' education has an ideological function to perform. Not only facts but inspiration toward idealism should make up the program.<sup>6</sup>

To meet such functions, the curriculum in workers' education has been broadened to include such studies as recreation, dramatics, and literature, whereas the subjects originally taught were labor history, trade-union problems, economics, public speaking, and English. Trade unions have

<sup>5</sup> J. B. S. Hardman, "Workers' Education," *Forum*, 75.450 (Mar., 1926).

<sup>6</sup> Fannia M. Cohn, "Workers' Education in War and Peace," *Workers' Education Bureau of America, Inc.* (New York, 1943).

enlarged their programs, too, in helping to promote consumers' Union information.<sup>7</sup>

#### DEVELOPMENT

In the sense that all the activities of the unions have educational value, workers' education began, of course, with the unions themselves. But systematic attempts to develop an educational program did not come until much later. The first of these was made by the International Ladies' Garment Workers' Union, whose 1914 convention authorized the general executive board to appoint an education committee. This committee soon entered into cooperative arrangements with the Rand School, whereby a number of courses were to be conducted under the joint direction of the International Ladies' Garment Workers' Union Committee and the Rand School. The 1916 convention voted \$5000 for a vigorous educational campaign, and in 1918 the sum of \$10,000 was voted for the same purpose. In 1917-1918 the Board of Education of New York City granted the use of four public school buildings for popular lectures and courses given under the auspices of the union. Early in January, under the same auspices, the Workers' University was opened and began its work in the Washington Irving High School in New York.

The union later expanded its work and established other unity centers for lectures and courses, not only in New York but in other cities, including Boston and Philadelphia. Various educational, health, and social activities were carried on at these unity centers, and courses of an advanced character were given at the Workers' University and at the headquarters building of the union. The nature of the work can be seen to some extent from the list of subjects offered for study. This included trade-union policies and tactics; current labor problems; economic problems of the working woman; woman's place in the labor movement; labor situation in the basic industries; the place of workers in history; a social study in literature; the development of industry and the trade-union movement in the United States; economics and the labor movement; public speaking; social factors in American history; the making of industrial America; recent social developments in Europe; economic basis of modern civilization; psychology and the labor movement; and English.<sup>8</sup>

The Amalgamated Clothing Workers began its systematic educational work in 1917, making a start that year in three cities, Baltimore, Chicago,

<sup>7</sup> Eleanor G. Coit and Mark Starr, "Workers' Education in the United States," *Monthly Labor Review*, 49:4 (July, 1939).

<sup>8</sup> *Monthly Labor Review*, 23:95 (July, 1926).

and New York. Although successful enough in the first two cities, the venture did not fare very well in New York. In 1918 the Amalgamated joined the United Labor Education Committee which had just been organized to function as the central body for workers' education, but withdrew after a couple of years, feeling that it could accomplish more alone. The work was pushed with great vigor and became one of the most important phases of the union's program.

Other unions in the needle trades began to develop organized educational work. We are not at all surprised to find that these unions made the start when we remember that a large share of their members were Russian Jews having an unusually strong intellectual interest. Somewhat later the movement began to find its way outside the needle trades, taking various forms. Sometimes the unions cooperated with the public schools after the fashion so highly recommended by the American Federation of Labor. In its report to the 1919 convention of the Federation the education committee spoke as follows: "Your committee recommends that central labor bodies, through securing representation on boards of education and through the presentation of a popular demand for increased facilities for adult education, make every effort to obtain from the public schools liberally conducted classes in English, public speaking, parliamentary law, economics, industrial legislation, history of industry, and of the trade union movement, and any other subjects that may be requested by a sufficient number, such classes to be offered at times and places which would make them available to the workers. If the public school system does not show willingness to cooperate in offering appropriate courses and types of instruction, the central labor body should organize such classes with as much cooperation from the public schools as may be obtained. Interested local unions should take the initiative when necessary."<sup>9</sup> The fact that this report was unanimously endorsed by the convention certainly indicates that the dominant element in the American Federation of Labor did not see in workers' education a means of preparing the workers for a new social order.

Numerous educational enterprises soon developed, some in cooperation with the public schools and the extension departments of universities, and some, such as the Boston Trade Union College of the Boston Central Labor Union, as integral parts of unions or federations of unions. Several resident colleges, notably Brookwood Labor College near Katonah, New York, and the Commonwealth College at Mena, Arkansas, were also put under way. A most interesting development was the establishment of summer schools for wage-earning women. The best known is probably the pioneer, the

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<sup>9</sup> American Federation of Labor, *Proceedings*, 1928, p. 86.

Bryn Mawr Summer School, in which, in 1934, there were almost a hundred students registered from about twenty different states and a few foreign countries. The largest number came from the clothing and textile industries and about half were trade-union members. There were also summer schools at Barnard College and at the University of Wisconsin. The Bryn Mawr Summer School was conducted by the Joint Committee of Affiliated Summer Schools for Women Workers in Industry, and the Barnard and Wisconsin Summer Schools were affiliated with this committee, which was composed of women workers in industry, summer school students, faculty representatives of the schools, and liberal women interested in education. Somewhat different was the Southern Summer School for Women Workers in Industry, established in 1927 quite independently of any college or university. A fourth summer school was started by a number of cooperating organizations at Occidental College, California, in 1933. The Vineyard Shore School, located at West Park, New York, opened in October, 1929, as the first winter school exclusively for women workers.

Resident schools for workers later established include: The Hudson Shore Labor School (formerly Bryn Mawr Summer School), opened in 1939, Highlander Folk School, located at Monteagle, Tenn., The Pacific Coast School, and The Summer School for office workers in Chicago.<sup>10</sup>

On-the-campus training for members of organized labor has now become an integral part of workers' education, as the unions have lost their fear that the colleges are centers of reaction. A number of universities have furnished facilities and staffs for annual labor institutes, others have provided scholarships and fellowships for labor leaders to take special courses on the campus, and recently Cornell University has established a New York State School of Industrial and Labor Relations. Under the direction of Irving M. Ives, Chairman of the New York Joint Legislative Committee on Industrial Labor Conditions, this new school opened its doors in November, 1945, with 107 undergraduates and 11 graduate students. The purpose of the school is to offer intensive work on a four-year college level in the field of industrial and labor relations. Graduates, who during their course of study will be required to work in a factory and have apprenticeship training in personnel management or labor organization work, are expected to be qualified to work in the labor movement, in government, or as labor experts in management.

One of the most important developments in workers' education was the organization of the Workers' Education Bureau in April, 1921, to provide

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<sup>10</sup> Eleanor G. Coit and Mark Starr, "Workers' Education in the United States," *Monthly Labor Review*, 49.7-9 (July, 1939).



"a national clearing house of information and guidance for American workers' education." The executive council of the American Federation of Labor made a careful study of the Bureau, and the education committees of the Federation's 1922 and 1923 conventions heartily endorsed its activities. At its 1924 convention, held in El Paso, the Federation approved a plan definitely tying it up with the Bureau. The basis of the plan was the payment of an annual fee amounting to one-half per cent per member by each national and international union affiliated with the Federation. The local unions were also urged to affiliate with the Bureau and to pay an annual fee of one dollar. State federations of labor, central labor unions, and the national federation itself were also to contribute to the Bureau's financial support.

The constitution of the Bureau provides that the executive committee shall consist of the president and the secretary of the association and nine other members to be selected as follows: one to represent state federations of labor, city central bodies, local unions, and other forms of labor organizations; two to represent workers' educational enterprises; three to represent the American Federation of Labor; and three to represent international and national unions. Particularly significant is the constitutional provision that makes eligible for membership any labor organization not dual or seceding in character and "all workers' educational enterprises under trade-union control and devoted to general education for workers." The purpose of the Bureau as stated in the constitution is to collect and disseminate information concerning organized labor's educational efforts and to coordinate, assist, and stimulate such efforts.

The Bureau operates a teachers' registry for labor schools, a library-loan service, a cooperative book service, and other projects of value to the workers' education movement. One of its most important services has been the sponsoring of educational conferences and institutes at which not only the problems of education but other questions vital to the workers' interests are discussed.

In 1941 the Workers' Educational Bureau celebrated its twentieth anniversary. Among the appraisals made of the Bureau's years of service was that made by Thomas E. Burke, president of the Bureau, when he stated at the April conference in New York, that workers' education "had been made an accepted part of the educational program of organized labor in this country."<sup>11</sup> Mr. Burke reported that special emphasis was being given to labor's relation to the national emergency, and that the program of Labor Institutes throughout 1941-1942 had been of special service.

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<sup>11</sup> American Federation of Labor, *Proceedings*, 1941, pp. 229-30.

Institutes were held in Texas, Kansas, Pennsylvania, Colorado, New York, Indiana, New Jersey, Nebraska, New Hampshire, California, and North Carolina. Meetings usually lasted two or three days with speeches, reports, discussions with particular focus on labor and defense.<sup>12</sup>

That the later growth of the Workers' Education Bureau was in complete harmony with the wishes of the American Federation of Labor is shown by a quotation from President Green's address on April 26, 1941: "This Bureau, under the active and painstaking directorship of Spencer Miller, Jr., has consistently and tirelessly spread the truth about organized labor and its aims and objectives. . . . In paying this deserved tribute to the Workers' Education Bureau and its fine record, I feel privileged to call upon this educational arm of the American Federation of Labor to enlist all of its energies now in the cause of democracy. . . ." <sup>13</sup>

In the address by Thomas E. Burke, previously cited, he listed also these achievements of the Bureau:

1. The Bureau has made the labor movement conscious of its contributions to public education;
2. It serves as a bridge between organized labor and education;
3. It has a public relations function to the organized labor movement;
4. It is now planning for educational postwar problems.<sup>14</sup>

Now under the direction of John D. Connors, who assumed his duties upon the retirement of Spencer Miller, the Bureau has continued to carry on the sponsorship of all of the educational activities of the Federation.

The Bureau had rough sailing, chiefly because of clashes between the conservative and the progressive elements. The conflict was something more than a petty factional dispute. It represented a clash of philosophies, a clash of educational aims. After having simmered away quite inconspicuously for a time it suddenly exploded in the vicinity of one of the resident colleges, Brookwood, whose affairs were somewhat obscured by the smoke until it closed in 1937.

Brookwood Labor College was founded in 1921 and was located near Katonah, New York. A two-year course was established including English and public speaking, economics, American history—with emphasis on social movements throughout—, social psychology, statistics, labor law, problems of trade unionism in the United States, dramatics, and labor journalism. Applicants were passed on by the Brookwood faculty after having been

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<sup>12</sup> *Ibid.*, pp. 230-31.

<sup>13</sup> *Ibid.*, p. 421.

<sup>14</sup> *Ibid.*, p. 421.

recommended by union officials. It was expected that the graduates would return to the labor movement to serve it in some capacity. According to one member of the faculty the school was "based frankly upon the hypothesis that a new social order is coming and that it is not necessary or desirable to aid in bolstering up the present social order which is passing. Beyond this Brookwood will not be a propagandist institution."<sup>15</sup> In its bulletin for 1929-1930 there appears the following statement of purpose: "Brookwood thinks of itself as part of the labor movement of America and of the world. Brookwood thinks of the labor movement both as a practical instrument by which workers achieve higher wages, shorter hours, and better conditions of work, and as a great social force having as its ultimate goal the good life for all men in a social order free from exploitation and based upon control by the workers."<sup>16</sup>

In the first year of Brookwood's existence, 1921, there were fifteen students. During the last few years the number was in the neighborhood of forty each year, for the most part textile workers and miners. The faculty was composed of men prominent in the labor movement for years. The students helped to pay their expenses by working at the college, living a life of combined work and study. There was little room in the program for impractical subjects, as the students brought their labor point of view into all the classes and saw everything from that angle. The curriculum itself was framed with this intention and the faculty continually emphasized the social aspects of all the topics considered. Dramas and novels were studied if they were social dramas and social novels. A number of plays have been written and produced by the students themselves, and one of these, "Quittin' Time," written by a coal miner, was played professionally at the Hedgerow Theater in Philadelphia.

In addition to the resident work offered, Brookwood sponsored several other activities, among which were an extension department and summer schools. Beginning with 1924 a national conference of teachers in workers' education was held each year at Brookwood.

On October 30, 1928, the executive council of the American Federation of Labor sent an official circular to all its affiliated bodies recommending that they cease giving financial support to Brookwood College. This action was taken in consequence of an investigation made by Mathew Woll, whose main charge against the school was that it had communistic tendencies. Immediately the storm that had been quietly gathering broke into full fury.

<sup>15</sup> First National Conference on Workers' Education in the U. S., *Proceedings*, 1921, p. 52.

<sup>16</sup> *American Labor Year Book*, 1930, p. 185.

The friends of Brookwood asserted that the Federation had taken this action without giving it a trial, to which the Federation replied that inasmuch as Brookwood was not affiliated with it, it had no authority to place the school on trial; but it did insist at the same time that it had authority to examine any organization that was receiving support from its affiliated bodies and to make such recommendations to these bodies as it saw fit.

In an open letter sent by the board of directors of the school to the delegates of the A. F. of L. convention there appeared the following statement: "Brookwood has not considered it to be a part of its duty as an educational institution to promulgate without analysis the views and policies of the American Federation of Labor, or of any other movement or organization. . . . Brookwood makes no effort to dictate to its students or teachers in what activities they shall engage in the labor movement, leaving it to the individual to decide these matters and to his union to discipline him if necessary."<sup>17</sup>

The antagonism between the Brookwood school and the Federation was clearly based upon their divergent concepts of the purpose of workers' education. Contrast the above statement issued by the Brookwood directors with the statement made by the executive council of the A. F. of L. to the 1928 convention of that body: "But not all educational work can be delegated to the public school authorities. There is a specific trade union field. There are the problems of making the trade union more effective, of meeting specific industrial situations, of managing a union most efficiently, of formulating union policies, etc. These are matters which must be under union control. Facts, information and discussions are necessary for the solution of these problems. Such matters are properly within the field of workers' education and the more closely that educational work is connected with union activity and union meetings the more effective it will be."<sup>18</sup> Workers' education to the A. F. of L. was a device for making the trade unions more efficient, with the understanding always that the unions to be helped in this manner shall be organizations which function in accordance with traditions of the A. F. of L.

In spite of its contributions to organized labor in the form of trained union leaders, Brookwood Labor College closed its doors in November, 1937, for lack of financial support. Chairman Julius Hockman of the board of directors explained that, although the C.I.O. and the A. F. of L. had been supporting Brookwood, the unions had decided to close the college until it became the "official" labor college.<sup>19</sup>

<sup>17</sup> *Ibid.*, 1929, p. 119.

<sup>18</sup> American Federation of Labor, *Proceedings*, 1928, pp. 86-87.

<sup>19</sup> *Time*, Nov. 29, 1937.

Following this assault upon Brookwood some of the progressives launched an attack upon the Workers' Education Bureau. Their chief charge was that the progressives who founded the Bureau had been pushed into the background by the orthodox trade unionists, and that the latter were rendering thoroughly spineless and inefficient an organization that had given some promise of putting new life into the American labor movement. The Federation carried its fight into the Bureau. James H. Maurer, long a leader among the progressives, had been its president for eight years. In retiring from the presidency at the 1929 convention, he stated that "the basic aim of workers' education as an intelligent guide to a new social order was now being denied; that freedom of academic discussion received a death blow in the Brookwood case; that the proposal of the executive council of the American Federation of Labor to the Los Angeles [1927] convention, for a change in the constitution of the Bureau, would be fatal; and that the proposal of the New Orleans [1928] convention to cooperate with the state universities would menace the control of labor."<sup>20</sup>

A most significant amendment to the constitution was adopted by the Bureau at this same convention upon recommendation of the committee on constitution, of which Mathew Woll was chairman. The amendment provided that labor colleges, to be eligible for affiliation, should be approved by both central labor unions and state federations of labor, and should not be antagonistic to the *bona fide* labor movement. At the 1931 A. F. of L. convention it was agreed that the Bureau and the Federation Committee on Education should be "coordinated into a unified whole" and an "organic relationship worked out."<sup>21</sup>

Closely aligned with organized labor the movement for the education of workers has made great strides. Leaders of the program predict an even much heavier schedule in the postwar reconstruction period. Spencer Miller, Jr., former Director of the Workers Education Bureau of America, reported in 1941 on progress and possibilities. He said in part, "The significant thing about our educational effort in the last eleven months is that the responsible leaders of labor and management have come to discover and recognize the importance of this method of study and research and discussion as a basis upon which to develop not only a common mind but also a common purpose. Through our institutes which constitute the central part of our educational effort we have been able, with the cooperation of scholars from one end of the country to the other, to bring together responsible leaders of labor with representatives of industry and

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<sup>20</sup> *American Labor Year Book*, 1930, p. 182.

<sup>21</sup> American Federation of Labor, *Proceedings*, 1931, pp. 345-346.

government and education, to take the measure of our present crisis and provide some guidance for a course of enlightened action." <sup>22</sup>

### WHAT DOES THE FUTURE HOLD?

Although workers' education has called forth a good deal of activity in recent years it cannot as yet be said to have developed a definite ideal and a definite program. Even its strongest adherents point, not to its accomplishments, which are admittedly meager, but to its potentialities. These, of course, are altogether incalculable, depending as they do upon so many factors which can be neither predicted nor controlled. Workers' education may hold within it the seeds of a revived labor movement that will raise the laboring class to new heights of health, safety, and happiness, and do so without serious unrest and disturbance; but, if this be true, only fertile soil and solicitous care will make any such result possible.

One of the most discouraging things about the workers' education movement has been the lack of response on the part of the workers themselves. Classes have been organized and the enthusiasm of the moment has swelled the enrollments, but before long the arduousness of sustained intellectual effort has taken its toll. The cause of this no one knows. It may be that the workers are too tired from their daily toil to give their best to the classes, although laborers probably work about as hard in England as in the United States and the English laboring men have taken to education like ducks to water.

It may be that there are not enough good teachers. This is a real possibility, for where are the teachers to come from? The labor movement in America has produced leaders, but have these men had the training and do they possess the vision to impart to others the true significance of learning? The trade unions have jealously guarded their offices from encroachment by men who have not come up through the ranks. This may have been a wise policy on the whole, but it has certainly robbed them of men with the academic equipment that is requisite to good teaching; and moreover it has barred the professional teacher from the intimate contact with the labor movement which is so necessary in the teaching of workers about social movements. Good teachers will have to be produced either by a closer cooperation between the unions and the "intellectuals" or by suitable training of the young workers. Either process will take time, and meanwhile the education movement cannot be expected to progress very rapidly.

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<sup>22</sup> Address by Mr. Spencer L. Miller, Jr., Director, Workers Education Bureau, in American Federation of Labor, *Proceedings*, 1941, p. 363.

It may be that the lack of a well-formulated aim has helped to make the workers unresponsive. It is doubtful, of course, whether such an aim can be worked out ahead of time, whether it does not have to grow with experience. Possibly the opportunistic policy so dominant in the American labor movement has made itself felt here. A policy of getting immediate results rather than of working out a long-time program may answer the purpose as far as wages are concerned, but education is a different matter. An educational enterprise can be adequately planned only by men who have vision, who can look past today and see the needs and opportunities of tomorrow, and who have infinite patience. Usually immediate and visible results are expected from the courses offered by the various schools. If the subject is drama, then the play must exhibit the life of the worker in such a way that his case will be furthered. If it is public speaking, then the young student must be trained to stir convention delegates to action and to put labor's case before the public in a persuasive manner. Results, results immediate, practical results! Perhaps this philosophy has so dominated not only organized labor but American life in general that it is altogether too much to expect the workers to throw off its influence in formulating their programs of education.

Yet as results have been achieved in the field of collective bargaining many unions have felt it possible if not necessary to devote some of their energies to things other than grievances. An educational program may provide strong, well-organized unions with a new field of interest and will certainly provide the newer unions with their thousands of members new to trade union ideals, a method for turning workers into trade unionists, and of training shop stewards in their new duties and responsibilities.

PART IV  
THE EMPLOYER



The employers have taken cognizance of labor's grievances. Some have done this by recognizing and negotiating with the organizations which labor has developed for the purpose of alleviating its grievances—the unions. Others have adopted an attitude of open hostility toward the unions and have built up an anti-union program which is a prominent phase of the industrial struggle. The opposition of some employers has been more subtle; they have avoided open warfare and have found indirect ways of undermining the union's influence. Still others have made an honest attempt to deal constructively with the grievances, and have devised elaborate policies and programs to that end.

## CHAPTER XII

### THE EMPLOYER AND THE TRADE UNION

#### EMPLOYERS' ASSOCIATIONS

##### *(a) Why Organized*

IN STUDIES of the industrial conflict employers' associations have, relatively speaking, been neglected. Yet they have played and continue to play a most significant part in the struggle. They are not new, having developed along with the trade unions, and they exist today in numerous and complex forms. In scope they are as extensive as the unions, in some instances more so, and they are powerful. They are by no means ignored by the trade unions and they must be taken into account by anyone who would understand the problems arising out of the industrial conflict.

Employers' associations arose largely as a result of the same economic forces that caused the growth and development of labor organizations, although in a sense it may be said that they were called into being by the presence of labor organizations. In like manner upon examining the development of labor organizations we find that one of the reasons for the organization of trade unions on a national basis was to combat the powerful employers' organizations. Thus each type of organization tended to produce the other.

But why did either hen or egg come into existence? To a very large extent the employers' association, like the trade union, is a product of the present industrial system, which, built as it is around the machine, must inevitably result in the development of a class of workers who could not own the tools with which they worked. This meant an employee class and an employer class whose interests could not harmonize entirely. As has already been set forth in some detail, labor organized successfully only to the extent that it stayed within the bounds set by common interest. Members of the employing class, although competing vigorously against each other at some points, had also many interests in common, and the most pressing of these were the interests having to do with the employment of labor. Professor Bonnett, who has made a comprehensive study of the employers' association, defines it as "a group which is composed of or fostered by em-

ployers and which seeks to promote the employers' interests in labor matters."<sup>1</sup> He further states: "The promotion of the employers' interests in labor matters is the function that characterizes every employers' association."<sup>2</sup>

The real conflict between employer and employee centers around matters of control. The laborer aims to improve his economic condition—to increase his wages, shorten his hours, better his working conditions—but if he is a member of a trade union, he aims to do this largely by obtaining greater share in the control over industry through his organization. Conservative unionism seeks through collective bargaining to wrest some control over wages, hours, and working conditions from industrial leaders who may be providing entirely satisfactory conditions. The devout may faithfully say, "The Lord giveth, the Lord taketh away. Blessed be the name of the Lord." The organized worker, however, although his industrial lord may have given bountifully, desires some control over what is given and what is taken away.

Now if unionism is in truth aiming at decreasing absolutism in industry and at bettering working conditions for its members, it is making a head-on collision with the employers, many of whom above everything else wish to maintain absolute control over their business and all of whom are interested in keeping costs minimized. On the question of autocratic control, many employers are very outspoken—and among these there may be men who are paying their employees good wages and treating them relatively well, whose essential attitude is revealed only when they are asked to bargain with their employees on a group basis.

In an earlier chapter<sup>3</sup> we have explained in some detail the economic and social basis for the workers' sharing with the management. We will see that the legislatures and the courts have both recognized this need. Yet some industrial autocrats cannot see that there is any place in the industrial scheme for collective bargaining by the workers. "The business is mine and the only voice of control is my voice. If there are any matters that you would like to have changed, you, the employees, have a perfect right to make requests. And I promise you that I will give those requests the most careful consideration. But there can be no arbitration, no bargaining, when there is but one voice of control and that my voice." If this seems an ex-

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<sup>1</sup> C. E. Bonnett, *Employers' Associations in the United States* (Macmillan, 1922), p. 13.

<sup>2</sup> *Ibid.*

<sup>3</sup> See Chapter VIII.

treme position to some persons today, it is only because labor has already succeeded in entering the wedge of collective bargaining some little distance, thereby forcing many employers to recognize the union and the workers' right to a share in the control of industry. It would not have been extreme fifty years ago, and it is far from uncommon at this moment.

Some employers claim to be quite willing to engage in collective dealing with their own employees but resent bargaining with outsiders representing their employees. This type of bargaining which made rapid progress a few years ago is dealt with more fully below.

To the extent that employers still maintain that the industries are theirs to control without interference of labor organizations, employers' organizations naturally have as their chief aim the protection of this control against the encroachments of organized labor. On the other hand, when collective bargaining has been accepted as a procedure for industrial relations, the employers' organization may act as the bargaining agency or when collective bargaining temporarily breaks down, as an organization to match economic strength with the union. Whether the dealings be militant or cooperative, the individual employer, although not nearly as helpless as the individual employee, is at a great disadvantage in confronting organized labor, so much so in fact, that if a struggle gets well under way he might easily, acting as an individual, be completely crushed. If the bargaining were individual on both sides, the employer would of course have a tremendous advantage over the employee. But when the latter is organized into a local craft union and this is backed by a national union which has federated with many other national unions, the employer's position begins to seem less secure. Relatively unfamiliar with bargaining and bargaining tactics, he cannot hope to deal on equal terms with trade-union leaders who are making these matters their lifework; and playing a lone hand he can make no widespread appeal to the general public for support, nor can he call upon his fellow employers for help. Most significant of all is the fact that in sheer strength he is usually inferior to a powerful organization of laborers.

So the employers have learned by experience that for many reasons unified action is absolutely necessary to adequate dealing with their organized employees. This does not mean that the employers are all one happy family. They have many interests which are not shared by any means. They are business competitors and sometimes the competition gets pretty keen, but they have learned to bury the hatchet as deep as their common interests seem to go.

*(b) Types of Organizations*

There are at the present time over 2000 employers' associations in the United States dealing in one way or another with labor matters. These organizations are of such bewildering variety that it is extremely difficult to isolate types. It was difficult to classify trade unions according to structure, and it would be even more difficult to classify employers' associations in that way. But it does seem possible to form rough divisions on the basis of their general activities, which may be classified as belligerent, and negotiatory.

The negotiatory association, although not always structurally similar to the trade union, is to a certain extent its counterpart. The union exists primarily for bargaining purposes, and so does the negotiatory employers' association. It may practice collective bargaining only because it has been forced to by the strength of the union in that particular industry. Possibly if it saw the least chance of success in becoming a belligerent association out to crush trade unionism, it would make that its course. However that may be, whatever the secret wishes of its leaders, the fact is that this type of organization does recognize the union as representing the interests of the employees and does bargain with it, entering in many cases into trade agreements.

As has already been pointed out, the trade agreement has been in use for many years in a number of industries, among them printing, building, and coal mining. For various reasons the United Mine Workers' Union declined somewhat rapidly during the years preceding 1934; and the employers showed no desire to aid it in its distress, in fact they got in some rather heavy body blows that accelerated its downward progress considerably. Since the National Industrial Recovery Act (N.I.R.A.) period, the organization has regained its former standing. In a great many trades, on the other hand, the associations have accepted negotiation as a permanent policy, recognizing that under existing conditions it is probably the most satisfactory method available.

This is not to say that the negotiatory type of association never resorts to force. The union committed to collective bargaining does not refrain entirely from the use of force and neither does the negotiatory employers' association. Just as the strike is an absolutely essential part of the general trade-union policy of collective bargaining, so are coercive methods, for example the use of the right to discharge, necessary to the general policy of negotiation adhered to by this type of employers' association. The distinction lies in the fact that force is used, not primarily to smash the

opposition, but to win the particular concession which is at stake in the dispute.

The second type of organization, the militant, is fundamentally belligerent in its attitude toward organized labor. True, some of the militant organizations were originally formed for purposes of negotiation and have become antagonistic to the trade unions through the failure of trade agreements. Others, hostile from the beginning, were organized primarily for the purpose of crushing unionism. This purpose may or may not be openly avowed. For example, the association may assert that, although it has no particular objection to unionism, it does stand for the open shop; which unions have learned by experience is equivalent to saying that while it does not object to unionism, it will fight it to the last ditch. The National Metal Trades Association originally followed negotiatory tactics, having agreements with the national union in the trade, but following the breakdown of the agreement system was led to change its policy to an extent which puts it in the militant class. Others which have fallen in the same category are the National Founders' Association, the National Association of Manufacturers, and the League for Industrial Rights.

With the passage of the National Labor Relations Act, the belligerent type of employers' association has become much less important and has changed its tactics considerably. A review of the history of employers' associations will be helpful, however, in understanding some of the developments of the national labor policy.

### *(c) Development*

Although employers' associations have gained a new prominence during recent years, largely because the militant type was the latest to develop, employers started to organize as soon as the present industrial system began to take shape. As early as 1789 there was in existence the Society of Master Cordwainers of the City of Philadelphia. In 1832 the merchants and the shipowners of Boston formed an organization whose chief purpose was to check "the unlawful combination formed to control the freedom of individuals as to the hours of labor and to thwart and embarrass those by whom they are employed and liberally paid." Other associations with similar intents existed contemporaneously with these, but much of their activity had nothing to do with labor. They sought to promote the general welfare of their members by such means as the securing of favorable legislation for their particular trades, the development of education, and sometimes the restriction of competition.

Employers' associations did not attain any great significance until after the Civil War. This was undoubtedly because up to that time labor organizations had for the most part remained local. Following the Civil War, however, large-scale industry developed. In 1864 the Iron Founders' Association of Chicago was formed. This organization recognized trade unions to a certain extent, that is, so long as they "minded their own business," and it reserved to its members the right to mind their own business. The latter took the position that when the employees attempted "to dictate to them in the management of their business," their plain duty was to suppress such movements. National associations soon blossomed out, the United States Potters' Association being organized in 1875.

Professor Bonnett divided the recent development of employers' associations into three periods: (1) the beginning of national employers' associations; (2) the development of negotiatory associations at its height; (3) the growth of militant associations.<sup>4</sup>

The eighties were a most interesting period viewed from any angle. Business in general grew by leaps and bounds. More miles of railroad were constructed than during any decade before or since. Although not unmarred by disastrous failures, this spectacular railroad building, so indicative of the buoyant spirit of the time, tremendously broadened the area of competition. The Knights of Labor reached its greatest height during the eighties. The American Federation of Labor was organized, as were many national trade unions.

The employers fell into step. In 1886 there were established the General Managers' Association, covering the twenty-four railroads centering or terminating in Chicago, and the Stove Founders' Defense Association, growing out of the National Association of Stove Manufacturers. Formed originally for the purpose of fighting the Iron Molders' Union, the latter organization saw fit in 1891 to change to a policy of negotiation and began to make use of the trade agreement extensively and with great success. The United Typothetae of America was organized in 1887 as a result of the demands of the typographical union for a nine-hour day. The local associations were particularly active at this time, as is shown by the fact that during the years 1884-1886 over 75 per cent of all lockouts were ordered by the local associations as compared with less than 30 per cent in the previous three years. The local associations also entered into many trade agreements. The national associations were organized chiefly for fighting purposes and were usually brought into being by some particular annoyance. They were deprived of their chief target when the Knights of

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<sup>4</sup>C. E. Bonnett, *Employers' Associations in the United States* (Macmillan, 1922), p. 21.

Labor lost its hold, and lapsed into quiescence for a time. In 1894 the American Railway Union appeared on the scene to cross swords with the General Managers' Association, and went down in defeat before it.

In general, the nineties were characterized by the development of the negotiatory type of association. That does not mean, of course, that no other type was present. In 1895, for example, the National Association of Manufacturers was formed. Although organized primarily to further the development of foreign trade, this organization has taken so active a part in labor matters that it can only be classed as militant. Its open-shop department has vigorously fought trade unionism by means of persistent and extensive campaigns against the closed shop. It "disapproves absolutely of strikes and lockouts, and favors an equitable adjustment of all differences between employers and employees by an amicable method that will preserve the rights of both parties."

Yet it is accurate to say that beginning with the early nineties negotiatory activities were dominant. During the eighties there had been numerous strikes in the stove industry, and with the organization of the Defense Association in 1886 the alignment was made national on both sides. A dramatic but indecisive struggle occurred in 1887 in the form of a strike in St. Louis. Following this the industry was fairly quiet until 1890 when a strike occurred in Pittsburgh. This was the first strike in the history of the industry to be settled by a written agreement. In the following year a complete plan to organize the industry for purposes of collective bargaining was worked out and this has continued in operation ever since that date.

During the next few years, particularly during the period 1898-1902, negotiation was the rule among the national employers' associations. It is interesting to note that these negotiatory agreements which were entered into by the national associations were used as a method of promoting trusts. Upon completing an agreement with the union, the association would force the independents either to join the combination or to conform to its price policy. The practice was particularly prevalent in the building industry. Among the associations which were formed during this period were the National Metal Trades Association, the Chicago Building Contractors' Council, the New York City Building Trades Employers' Association, and the National Building Trades Employers' Association.

The opening of the new century saw the development of the militant type of employers' association and the adoption of belligerent tactics by a number of associations that had formerly been mainly negotiatory. The National Metal Trades Association, organized primarily to negotiate with



the union in the industry, became openly belligerent in 1901. The Citizens' Industrial Association of America was organized in 1903 in definite opposition to unionism. Many local citizens' alliances, composed of employers and other citizens interested in combating unionism, sprang up. The American Anti-Boycott Association, which later became the League for Industrial Rights, was organized in 1902. The United Typothetae of America became quite militant in 1903, as did the National Founders' Association in 1904. The National Erectors' Association, which had formerly followed a policy of negotiation, declared itself belligerent in 1906 and soon was attracting nation-wide attention by its warlike methods.

In practically all of these associations the degree of militancy increased rather than diminished during the years prior to the depression of the thirties. The First World War made possible a considerable advance in unionism, but a sharp decline followed the 1920 depression and even during the ensuing prosperity years the unions could not hold their own. A reaction from the spurts made during the war period was to be expected, of course, but certainly a part of the loss must be ascribed to the energetic onslaughts of the employers' associations.

The National Industrial Recovery Act gave a real impetus to trade unionism and the passage of the National Labor Relations Act, protecting labor's right to collective bargaining, has led to changed tactics on the part of employers' associations. Many employers are now dealing with unions who, prior to 1933, would have nothing to do with them. This has made the negotiatory type of more importance. Whether this represents a change in heart or merely cooperation with the inevitable remains to be seen. Meanwhile, some militant employers associations have tried to find new methods of circumventing the Labor Relations Act and, failing in that, have sought to "educate" the public and Congress of the need of emasculating the Act by amendment.

#### *(d) Philosophy of the Militant Employer*

The assumptions, theories, and attitudes underlying the militant employers' associations are particularly significant in view of their prominent place in the industrial conflict. This type of association is organized on the assumption that there exists a harmony of interests among the various groups in society. The interests of the employers are much the same as those of society as a whole. Hence when any group such as organized labor opposes the employers it should be restrained, because in opposing them it is opposing the interests of society. Even the interests of the laborers, if

they only knew it, are the same as those of the employers. When the labor unions array themselves against the employers they are unwittingly making war on themselves.

The unions are not following an enlightened policy worked out by the laborers. A few selfish leaders hungry for power are deluding the rank and file into thinking that they should fight the employers when in reality they would be serving their own best interests by cooperating with them. Such organizations are vicious and should be crushed in the interests of the laborers themselves. Anyway the business belongs to the employer and any interference with his running of it is simply an unwarranted intrusion upon his personal affairs. Especially indefensible is any interference by persons who have no connection with the plant. The employer is giving in enough if he consents to have dealings with his workmen; to ask him to negotiate with men who are not in his employ is not merely unreasonable, it is insulting. This makes all trade-union officials meddlers and intruders.

The employer sees himself as a benefactor of the laborers. He gives them work and thus enables them to live. Instead of being held responsible for the miserable conditions under which much of this living has to take place, he should be thanked for providing the work that permits it to go on at all.

As long as the employer holds to any such point of view as this there will continue to be open conflict between him and his employees; and his ideas, moreover, will continue to run counter to prevailing social thought. For he is clinging to a type of absolutistic philosophy that has long since been abandoned by thinking people. His concept of himself as a benevolent despot is based on the belief that he has certain rights. In point of fact he has, but where did he get those rights? The only rights possessed by any individual or any group are the rights that have been granted them by the society in which they live. Since any society is apt to be controlled by one or another of its constituent groups, this group will certainly set aside for itself, to have and to hold, a larger number of rights than will fall to the share of any other group. Now there will be few who will question, at least among responsible students of the government of the United States, that from the beginning it has been largely in the control of groups sympathetic with the interest of the employing class; whence it follows that the lion's share of rights has been awarded to the employers.

It is true then, as the employers so fervently believe, that they have certain rights. What they sometimes forget, even though it is a very important thing to bear in mind, is that these rights are not "inalienable." They were not proffered by an all-wise Jehovah as gifts to be enjoyed by them

forever and ever, world without end. They have no moral sanction. They are derived simply and solely from the control of the government by the employer class together with groups which are in sympathy with it. The laborers until recently have had fewer of these rights than have the employers.

In all this there is no implied criticism of the antagonism which the employers' associations often manifest toward the trade unions. With society organized as it is at present it seems impossible to lay hands on any principle by which industrial disputes can be settled in a manner satisfactory to all. The parties to the struggle must examine the situation and in the light of their own interest and knowledge decide what policy they ought to follow.

But when the employer or the employee speaks of rights as though they were God-given and therefore divinely sanctioned, he is talking about something that simply does not exist. In using language so redolent of medieval sanctities he may, of course, be quite consciously forging a weapon for a fight whose fierceness seems to justify the use of any stratagem whatever. But the public should try not to be misled by these pious appeals to rights that exist only because the group in question has the power to put them into effect. We may expect that employers will continue to organize to combat unionism as long as laborers organize to improve their economic condition; just as laborers will continue to organize for this purpose as long as industry itself is so constituted that income belongs to those who can get it. We may also expect that as long as the government is susceptible to group control, that group whether employer or employee which is the happy possessor of the most "rights" will endeavor to delude itself and as many others as possible into believing that these rights have somehow descended from on high.

#### *(e) Effects of the New Deal*

The name employers' association has reference primarily to organizations created for the purpose of dealing collectively with questions arising out of the employment relation. The term "trade association," on the other hand, is applicable to "organizations composed of business enterprises engaged in a particular industry or trade, and created primarily to promote trade interests and to improve competitive relationships." As a result of the functioning of the National Industrial Recovery Act the trade association was forced to deal with the employment relation, and the distinction between the employers' association and the trade association has

been partly wiped out, although the latter will undoubtedly continue to have the more varied interests.

The N.I.R.A. required that employers should comply with minimum-wage and maximum-hour provisions approved by the President. It also provided that the President should afford every opportunity for employers and employees in any trade or industry to set maximum hours, minimum rates of pay, and other conditions of employment. The usual procedure followed in the formulation of the code was for the employers, in most cases through a trade association, to present a code upon which they had agreed. A hearing was then held by the Administrator at which the labor groups and the consumers were given a chance to offer amendments. After approval of the code by the President, the code authority, a board whose function it was to supervise the enforcement of the code, was appointed. The code authority in most cases was composed of employer representatives with one or more nonvoting governmental representatives, representation having been given to labor in only a small number of cases.

Although little use was made of Section 7(b) in the sense of joint agreements beyond the minimum terms fixed in the codes, these agreements to be approved by the President, enough was done to indicate that they had possibilities. The bituminous coal code contained important regional agreements covering many points of importance to the workers. The construction industry code contained a blanket provision which made binding upon all employers, in the particular division of the industry in the particular region, the terms that had been agreed upon in collective bargaining. That strong labor organization was a factor in code making is clearly shown by the relatively favorable terms which the workers obtained in such codes as those for the construction industry and the cloak and suit industry.

The end of the N.I.R.A. brought an end likewise to these experiments with a broader use of the trade association. The enactment of the National Labor Relations Act gave the trade union new lease on life as we have discussed in an earlier chapter. With steel, automobiles, rubber, aluminum, and other large scale industries joining the trend toward collective bargaining, it may well be that the trade association will have as one of its functions the former functions of the employers' associations.

#### ANTI-UNION TACTICS

Employers through experience have learned how to forge weapons that will wound and kill. Of these the employers' association itself is one of the

most effective. In fact, it is this instrument which enables them to make use of other weapons which, were they not formally united, would to a very great extent be out of their reach. We have seen that not all the employers' associations are openly fighting the unions. Some are trying to carry on peaceful negotiations. But many of these latter are negotiatory only because the union's strength makes it necessary for them to adopt a conciliatory attitude. As has already been pointed out, when the situation becomes altered in such a way as to persuade the association that it is in a position seriously to weaken or to destroy the union, it is apt to change its policy to one of open militancy.

Hence we shall include in this discussion certain policies belonging exclusively to employers' associations, as well as those methods which are not confined to the associations but are also used by employers acting as individuals. The employers have generally found it necessary in their associations, as have the laborers in theirs, to build up a money reserve. The funds are usually raised by means of initiation fees, dues, and assessments to meet particular emergencies. When an employer gets into difficulty with a union, his association ordinarily comes to the rescue; in fact, employers sometimes aid each other financially even though they are not united in an association. Compensation is often given directly to the employer out of an association fund maintained for that express purpose. Banks are often induced to refund interest on loans during strikes, and owners are urged not to enforce penalties on failures to live up to building contracts.

The members of the association themselves give material help. Those who are not affected by the strike take the orders of the one who is, do the work, send the finished product out under his name, and give him the profit on the sales. If they have men in their employ who are not union members, they sometimes lend these to the afflicted employer for the duration of the strike. Special efforts are made to secure patronage for him from members and outsiders. The associations' tactics are not always purely helpful and constructive. They not only aid their own members in fighting the unions, particularly during a strike, but they often attack employers who for one reason or another are too friendly to organized labor. They sometimes refuse to give any aid to an employer operating under a closed-shop agreement; and any member of the association who enters into a closed-shop agreement is quite apt to be expelled, forfeiting all claim on the strike reserve fund. From newspapers which exhibit undue friendliness to unionism the employers withdraw, or threaten to withdraw, their advertisements.

*(a) Tempting the Union Leader*

A very effective method of fighting unionism is to draw off the leaders from its ranks. W. Z. Foster, the noted communist, may have exaggerated the extent of this defection somewhat, but the stories he tells are unfortunately not the only evidence at hand. The history of organized labor is full of examples of trade-union leaders who have joined the ranks of the employers.

Sometimes it is a pure case of double-dealing. For example, in 1926 the United Mine Workers' Union had to purge itself of an undesirable official in the person of Frank Farrington, who was expelled for holding a position with the Peabody Coal Company while serving as president of the Illinois district of the union. As a Peabody employee Mr. Farrington received a salary of \$25,000 a year. When the Peabody Company suggested that he resign from the union, he replied that he could attend to the Peabody interests better if he kept his union office.

In other cases employers recognize the merits of union leaders and obtain their services by offering them larger salaries than the union can pay. Although this is a usual business procedure and cannot be designated as a dishonest method, it has the effect of drawing some of the best blood out of the union ranks and of weakening them seriously. Tom Lewis, who succeeded John Mitchell as president of the United Mine Workers' Union, in 1919 became secretary of the New River Coal Operators' Association of West Virginia; and one of the earlier presidents, M. D. Ratchford, was made commissioner for the coal operators in Illinois. Thomas Rowe, president of the Flint Glass Workers' Union in 1916, later became manager of the American Bottle Manufacturers' Association of Newark, Ohio. Louis Adamic says of the Amalgamated Association of Iron and Steel Workers: "One president of the A. A. left his office to become secretary of the American Tin Plate Company, then United States Consul at Birmingham, England, and finally a business man in Pittsburgh; another became inspector of immigration in New York; a third, a Republican Congressman; a fourth, a Republican city councilman in Pittsburgh; a fifth, secretary of the steel manufacturers' association on the Pacific Coast."

*(b) Discrediting the Union Leader*

Another method sometimes used by employers is to exploit the not infrequent mistakes of union leaders. Some union official is guilty of an error in conducting a strike, and immediately the mistake is capitalized to

the limit in the public press. Not merely this; it is set forth in the worst possible light to the members of the union, whereupon the unfortunate leader is quite apt to be discredited and more or less dissension stirred up in the union ranks. It is true that not all union men have been strictly honest. Many have misused union funds and have been extensively involved in graft of various kinds. Others have committed criminal offenses that could not be tolerated by the unions themselves. The names of such men as McNamara, Parks, O'Shea, and Madden carry an unsavory odor to the nostrils of all who have followed the course of events in the union world.

No whit less malodorous are the names of a few employers, and there are many whose records are not immaculate, but the employers with the power that wealth bestows have managed to turn most of the spotlight on the sins of labor. It is not at all unusual to hear respected citizens speak of all union leaders as grafters and thugs. A book entitled *A History of Organized Felony and Folly, the Record of Union Labor in Crime and Economics* was published by the *Wall Street Journal* in 1923 but there is no intimation as to who the author or authors might be. Among the chapter headings are: *Uplifting the Press, Abe Ruef's Paint Eaters, Union Supplied the Soup, Bandits Frame Union Demands, Union Butchers at Work, Ex-Convict as Organizer, Union Instigated Herrin Massacre, Unionists Slay Under the White Flag, Unionists Mutilate Bodies, Rail Unions in Wholesale Murder, Canonization of Crime*. Upon examining its contents one finds that there is a great deal of truth in the book. Yet if this were the only volume on labor that a person ever read, one might easily carry away the impression that the trade union is an organization of morons banded together under the leadership of ex-convicts, cutthroats, and grafters.

Labor Board cases offer a mine of information of the methods used by employers to discredit unions and their officials. Racial and sectional prejudices are aroused and all of the popular derogatory catch words are brought into play. The leader is denounced as a "drunk," a "red," a "communist," and lately as a "fifth columnist." Recently a mill inspired preacher denounced the C.I.O. saying it meant Christ is Out, and southern workers are told that the union is the Mark of the Beast as described in Revelations. If such denunciations are for the purpose of interfering with the employers' right to self-organization, they are, of course, illegal under Section 8 of the N.L.R.A. Often, however, the cease and desist order of the Board comes after the damage to union prestige has already been done.

*(c) Intimidation*

Militant employers not only attempt to undermine the unions by discrediting their leaders in the eyes of the union ranks and in the eyes of the general public, but they have also practiced direct intimidation of employees who wished to join a union. In many plants it has required superhuman courage on the part of the individual employee to show any sympathy toward the union, let alone join it. As soon as the employer discovered that there was union agitation in his shop, he would call in the men and warn them to have nothing to do with the union on pain of discharge. This was a very effective method; for of all the fears which stalk the working-man's path, that of losing his job is undoubtedly the hardest to face.

One reason for the inefficacy of organizations within the shop which have no affiliation with an outside agency is that in many plants an employee is pretty sure to be discharged the moment he gives the least indication of interest in any kind of organized action. John Fitch tells of an incident that occurred in one of the large manufacturing plants of the country when the men in one of the departments circulated a petition for an increase in wages. The petition was presented to the superintendent, but the superintendent would not receive it. He declared that it was "contrary to the policy of the company" to receive petitions, and furthermore ordered the men to erase their names from the petition. Those who refused were immediately discharged.<sup>5</sup> Unionism had not been hinted at in this case, but there were signs of united action and apparently it was the policy of the company to stamp them out at the start.

The Commission of Inquiry of the Interchurch World Movement states concerning the United States Steel Corporation, "The sole concern of the Steel Corporation was whether the anti-union policy would be carried out, without too great damage to immediate profits. The decision was a weighing of chances; the decision did not concern the rights of man.

"The history of the Steel Corporation's dealings with labor since 1901 shows a consistent and successful carrying out of the anti-union policy. Largely by shutting down mills 'conceded' to be 'union' and by discharging workmen for forming other unions this result has come about: whereas in 1901 one-third of the Corporation's mills dealt with unions, in 1919 these and all other unions had been ousted; no unions were dealt with. . . ."

The Commission goes on to state, "The Commission's data show that the practice of the anti-unionism alternative by the Corporation and by a large number of independents entailed in 1919—

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<sup>5</sup> John Fitch, *The Causes of Industrial Unrest* (Harpers, 1924), pp. 161-162.



1. Discharging workmen for unionism, just as the twelve men were discharged at Wellsville in 1901 for forming a lodge; also the eviction of workmen from company houses and similar coercions.
2. Blacklisting strikers.
3. Systematic espionage through 'under-cover men.'
4. Hiring strike-breaking spies from labor detective agencies.

. . . . .

"Most important is the feeling throughout the Corporation's workmen that the price of joining a union *may be* discharge at any minute. All workmen know it. Their first concern after secretly signing up is 'protection.' Moreover discharge is only the symbol for a whole system of opposition just as persistent and almost as effective as the more drastic act. The system works in discharge from a job, but not from the plant, i.e., in transfer of known union men from good jobs to worse ones, even from skilled job to common labor, until the man discharges himself from the industry."<sup>6</sup>

Such excesses eventually brought remedial legislation in the form of the National Labor Relations Act which among other things makes intimidation illegal. While enforcing this section of the law the Labor Board has discovered and condemned many new and subtle ways of intimidating employees.\*

#### (d) *The Blacklist and the Lockout*

The blacklist and the lockout are sometimes spoken of as the counter-weapons of the employer, the blacklist corresponding to the boycott and the lockout to the strike. This is correct as regards the blacklist but is somewhat faulty as regards the lockout. As a matter of fact, the employer seldom uses the lockout because a lockout may be just as disastrous as a strike in its effect upon his business. In either case, the business is closed down and the employer is losing money. It is true, of course, that in the case of the lockout the employer has the privilege of making the decision, and naturally he would not close down his plant if he anticipated great losses. On the other hand, it must be remembered that the purpose of the lockout is to bring the employees to terms, and so the employer is choosing between conceding something to his employees and closing down his plant. Does he not make exactly the same choice in the case of a strike? For in a sense a strike is also the result of the employer's decision. It, too, is a thing that he can always avoid if he will but grant the laborers' demands.

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<sup>6</sup> Commission of Inquiry, Interchurch World Movement, *Report on the Steel Strike of 1919* (Harcourt Brace, 1920), pp. 207, 209, 211.

The true counter-weapon to the strike is, as a matter of fact, the individual discharge. If the employer can pick out the union leaders and agitators in his employ and discharge them, he not only avoids the necessity of shutting down his plant, but he makes very effective thrusts at the union. Discharge of individual workers for union activity is now illegal under the National Labor Relations Act. Just as picketing aids materially in the handling of a strike, so the blacklist greatly helps the employer in his use of the individual discharge for the purpose of getting rid of union leaders, members, and sympathizers. In some cases the employers' associations keep lists of working men who have participated in a strike or who have shown themselves to be in sympathy with the union movement in any way, and these are distributed among the members for their guidance in hiring and discharging men. Such information is not only prepared and distributed by the associations, but individual employers are wont to help each other in the same way. Sometimes instead of a blacklist a "white list" is used. This is simply another way of arriving at the same result; records of all employees are kept and the employer needing laborers is supplied with a list of men having "clean" records. Blacklisting has been held by the Labor Board to be a form of interference with labor organization but the practice has shown up infrequently in the board's cases. Since it can be perpetrated with absolute secrecy, however, it probably continues to be one of the most effective weapons with which the employer is equipped.

#### *(e) The Individual Contract*

Another most effective weapon used by the employer in his fight against unionism has been the individual contract. This weapon has been particularly useful in the coal industry. The "yellow-dog" contract, as it is called by unionists, has great advantages. A worker applies for a job and is asked to sign a contract containing the anti-union clause. His crying need is a job and he is in no position to be fussy about such trifles as the possibility that some day he may want to join a union. It would be nothing unusual if he could not read or write or even understand the English language. But that would not matter, for a cleverer man is there to guide his hand over the treacherous path that leads to the all-important *x*. And an *x* seems a very small thing to give in exchange for a job. In unorganized districts it has been a relatively easy matter to get these yellow-dog contracts signed.

The great efficacy of the yellow-dog contract was derived largely from the support that had been given it by the courts. Following the Hitchman

case<sup>7</sup> its use spread rapidly. As a result of recent legislative action the anti-union contract has been severely curtailed if not entirely eliminated, as far as federal jurisdiction is concerned. The Norris-LaGuardia Act, passed in 1932, declares this kind of contract *unenforceable* by the federal courts, and the National Labor Relations Act goes further and makes it a violation of the act for the employer to require that the worker refrain, as a condition of employment, from joining a labor organization.<sup>8</sup>

(f) *The Spy System*

In general the militant employer believes that, to combat unionism effectively, he must be aware of the plans and movements of the unions and the union men who are connected or potentially connected with his business. On numerous occasions he has given evidence of knowing that trouble was brewing as soon as the union men knew it themselves. Such knowledge affords him a tremendous advantage, as he well knows. So he has found ways of obtaining it. Elaborate and efficient methods for gathering the needed information have been devised and put into use, methods which are popularly—and accurately—known as the spy system.

The spy system, human nature being what it is, is not a hard thing to develop. In any large group banded together for their special purposes, whether of employees, employers, or other citizens, there are always some who are ready to curry favor with those in power in the hope of gaining some advantage for themselves. In the case of employees, the desired advantage is some sort of favored treatment, perhaps a promotion or an increase in wages. The employee learns of certain plans as they are discussed among his fellow workmen and he carries the tale to his employer, who, after receiving the information or possibly before, perceives the value of conserving and making more accessible this source of inside facts. So the "loyal" employee is rewarded to insure a steady supply of the desired "low-down." The next step is to go outside and engage experts to do the work.

In the very nature of the case it is well-nigh impossible to determine exactly the nature and extent of the spying that is going on in industry at the present time, but it is common knowledge that the spy system has been used sufficiently in some sections of American industry to create serious unrest among the laborers. Some of the agencies are quite open about their work and advertise generally that they specialize in industrial spying. An advertisement of Daugherty's Detective Bureau of New York City reads:

<sup>7</sup> *Hitchman Coal and Coke Co. v. Mitchell*, 245 U. S. 229 (1917), described in some detail in Chapter XV.

<sup>8</sup> See Chapter XV.

"Consultation and advice free on the following: Investigations—Surveillance—Railroad Work—Industrial Plant Observations—Mercantile Reports." The Cosgrove Detective Agency is ready to supply the following: "Expert Secret Service, Industrial Efficiency, Civil and Criminal Investigations, Labor Replacement with the better type of workers for all industrial transportation and Marine Labor Difficulties."<sup>9</sup>

The following is the substance of a letter written to prospective clients by Dunn's National Detective Agency, "We are in a position to place in your plant, laborers, mechanics, clerks, bookkeepers, in fact people of any vocation to obtain information as to a forerunner of labor trouble.

"We will furnish guards on very short notice, and will break a strike in a way that will obviate the necessity of your being forced to use union or other employees not of your own choosing. . . .

". . . The head of this agency has as much use for a strike breaker as he would have for a thief."

The William J. Burns Agency of New York writes, ". . . Ever since the McNamara case we have made a close study of labor difficulties and have perfected our industrial organization. . . .

"In pursuing this character of work we have organized this department in such a way that we are in a position to anticipate these labor difficulties in all industries, and by this method apply what we call preventive measures."

From the Corporations Auxiliary Company of Chicago comes the following, "Don't you think it would pay you to know your men, know every man in your employ . . . ? It can be done quietly and inexpensively by the use of the Corporations Auxiliary Company's Industrial Inspection Service. . . .

"Wherever our system has been in operation for a reasonable length of time considering the purpose to be accomplished, the result has been that union membership has not increased if our clients wished otherwise. In many cases local unions have been disbanded.

"We help eliminate the agitator and organizer quietly, and with little or no friction, and, further, through the employment of our service, you will know at all times who among your employees are loyal and to be depended upon. . . ." <sup>10</sup>

In 1915, when testifying before the United States Commission on Industrial Relations, Mr. W. W. Atterbury, then vice-president of the Pennsylvania Railroad, said, "The business of a railroad officer is to know in ad-

<sup>9</sup> John Fitch, *The Causes of Industrial Unrest* (Harpers, 1924), p. 173.

<sup>10</sup> Sidney Howard, *The Labor Spy* (Republic, 1924), pp. 23-27.

vance what is going to happen, and we keep ourselves very thoroughly posted as to what is going on. We have a very efficient police organization, and we know in advance everything that is going on just exactly as the organizations themselves know what is going on with us. We have emissaries in our ranks just as the organizations have emissaries in their ranks.”<sup>11</sup>

Other examples might be given; but it should be clear from the foregoing that the spy system is an important part of the employer's anti-union program. The methods employed by spies are many and various. Sometimes they merely get all the information possible and turn it over to the employer, who, now aware, say, of plans for forming a union, can take appropriate action. He may discharge the ringleaders on the ground of incompetency, with the result that others, seeing the agitators lose their jobs, will think twice before following their example. Even though the union has already been organized, information with regard to its plans and doings will be invaluable. Its leaders and officers can be discriminated against. Knowing in advance the union's plans with regard to wage demands, strikes, and so forth, the employer can anticipate and oftentimes frustrate them.

Sometimes the spies join the union and push themselves forward until they have lodged themselves in its most responsible positions. ‘Sometimes all the important offices in local unions are held by labor spies. The possibilities of this method are numerous. In most unions the policies are to a very great extent determined by the officers, and officers in the secret pay of the employer will of course shape the union's policies so as to benefit him rather than the members. A strike called at an inopportune time may prove to be the union's Waterloo. A leader can often entrench himself with the rank and file by strongly urging some action against the employer. Another leader, cautious, wise, and above all loyal, will counsel a waiting policy, will oppose the calling of a strike. It is only natural that the average laborer should regard the latter with suspicion as being deficient either in courage or in concern for the workers' interests. The violent agitator carries the day. A strike is called and, conditions being unfavorable, is an utter failure. The spy has earned his money.

Just how a detective agency functions when engaged by an employer to “solve his labor problem” was clearly set forth in a book published in 1917 by Sherman Service, Inc., under the title *Industry, Society, and the Human Element*. The sub-title was *A Few Detective Stories that Are Interesting and Instructive*. According to the preface the purpose of the book was “to state from a strict practical standpoint what may be done to stop unrest in

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<sup>11</sup> U. S. Commission on Industrial Relations, *Final Report and Testimony*, vol. XI, p. 10130 (1916).

the industrial, social and moral life of any organization. The illustrations given are truthful occurrences."

Once when testifying in an injunction case Mr. Sherman explained the purpose of his organization as follows: "We send representatives into a plant for the purpose of investigating and in order that they may report the real existing conditions in the plant. We term that '*invisible service*' because we believe we can develop the unbiased and unprejudiced facts more clearly in invisible service. We receive daily reports from these individuals. We submit to our client the substance or pith of these reports together with such recommendations as we believe essential."<sup>12</sup>

Excerpts from one of these "detective stories" might throw some light upon the methods and activities of this agency: "The employees of a manufacturing house of national prominence submitted demands for a ten per cent increase. The company offered a five per cent advance, but, after several conferences without avail, over twelve hundred went on strike."

No union had been in existence in that trade but there were over two hundred thousand employed in it. A certain union made an attempt to organize the workers; and the company, one of a large number of concerns controlled by a single corporation, resisted. "We were called in and given *carte blanche*. . . . Six secret operatives, two of each nationality most prevalent among the strikers, were detailed to learn the inside conditions, the acts and contemplations of the strikers and their leaders, who the most violent agitators were, the moral and financial support of the strikers and their organization, and, primarily, to gain positions of confidence and influence among the men so as to be able to render an effective service at the psychological time."

The plant was reopened and the agency proceeded to get workers. "Although we were very discriminating in our selection of workers whom we recruited, we found it expedient to detail four secret service operatives, hired in the same way as the other workers, to live in the different barracks and check any agitation which might arise among the recruits and to immediately report on any labor agitator or strike sympathiser who might have been hired accidentally. Through this service we were able to keep the factory one hundred per cent clean with loyal workers.

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"After eight weeks . . . the strike was declared off. All hands went back in a body on the following day. . . .

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<sup>12</sup> Sidney Howard, *The Labor Spy* (Republic, 1924), p. 33.

"The weekly meetings of the local unions discontinued. The leaders of the strike were gradually discharged for one reason or another. . . . Our operatives, surrounding themselves with many of the former strikers upon meeting days, and going away upon recreation trips with them, the attendance at the meetings gradually diminished. At these a sufficient number of operatives were detailed to use the proper influence to promote legislation favorable to our client. . . . Then it was comparatively easy to start dissension among the leaders which increased to the extent that each gathering resulted in a fight. These occasions allowed our secret operatives to further illustrate the fact that the leaders were out for personal gain. . . . Finally, by properly applied methods, the union charter was returned and the local abandoned.

". . . The local union was disorganized, and that national industry of which our client is the great majority has not been organized."<sup>13</sup>

There is a whole string of such stories in this illuminating book on "industry, society, and the human element." Sherman Service is, of course, not the only company using tactics of this sort. Numerous agencies stand ready and waiting to help any employer who will accept the results and pay the bill.

It may be possible to justify such methods on the ground that the labor conflict is war, and that no general agreement has ever been reached as to what methods are permissible in warfare and what methods are not. Spies have played an important part in military struggles, and although the extreme punishment is meted out to the ones that are captured and although the calling is held in universal contempt, still the nations of the world accept the system and use it to the limit. Whatever may be one's attitude toward the ethics of industrial spying, one can hardly escape the conclusion that thus far its results have been anything but happy. Here it has succeeded in breaking up a strike, there it has prevented a union from being organized, and somewhere else it has demoralized a union already in existence. Even if we agree with the employer that these results are desirable, the general effects have unquestionably been bad. We do not have to accept the trade union as a legitimate method of protecting the workers' interests to see the injustice of piling up to its account all the violence that occurs during a strike, when a large share of the outrages that are committed can be traced directly to the activities of the employer's agents. These men either commit violence or cause violence to be committed for the sole purpose of discrediting the union.

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<sup>13</sup> *Ibid.*, pp. 33-37.

If there is one thing which more than any other tends to discredit the unions in the public eye, that thing is violence in labor disputes. When a social institution is being condemned for something for which it is not to blame, not only does the institution itself suffer an injustice, but society as a whole may suffer through being deprived of something that it needs. This is not to say that the trade unions have never been guilty of violence themselves. In a previous chapter, instance after instance was given of the use of criminal tactics by organized labor. But an institution should be judged in the light of its own practices and should not have to bear the burden of its enemies' evil doings. In the report of the Commission on Industrial Relations Mr. Luke Grant asserts, "Espionage is closely related to violence. Sometimes it is the direct cause of violence and where that cannot be charged it is often an indirect cause. If the secret agents of employers, working as members of the labor unions, do not always instigate acts of violence, they frequently encourage them. If they did not, they would not be performing the duties for which they are paid, for they are hired on the theory that labor organizations are criminal in character. The union spy is not in the business to protect the community. He has little respect for law, civil or moral."<sup>14</sup>

Not only does the spy system lead to violence and thus to an unduly severe indictment of the trade union, it does far worse than this. It poisons the atmosphere of the community as a whole, it develops deceit, treachery, and corruption. Men become suspicious of each other. Trust is a word unknown in a community where espionage is practiced on a large scale. When men are bribing other men to tell tales about their comrades, tales which may deprive them of their means of livelihood, moral standards cannot be maintained on a very high plane, and widespread degradation of character is inevitable. As Sidney Howard says in his illuminating report on the subject, "If ever there were a field for Congressional investigation, an institution completely damnable, ethically, socially, and economically, it is industrial espionage."<sup>15</sup> Fortunately the more progressive employers are coming to see that any situation that would seem to call for espionage is a bad situation in itself and will lead to inefficiencies too expensive to be countenanced. Especially in smaller companies the spy system is regarded as a symptom of low morale which would be a factor in failure if long continued. There are indications that its use is on the wane and that it is becoming more and more confined to a few industries. Until recently it was almost impossible to determine exactly the nature and extent of the

<sup>14</sup> *Ibid.*, p. 178.

<sup>15</sup> Sidney Howard, "The Labor Spy," *New Republic*, 26:131 (Mar. 30, 1921).



spying going on in industry. The investigations of the La Follette Civil Liberties Committee of the United States Senate, however, have brought to light many interesting facts concerning these practices.<sup>16</sup>

### THE COMPANY TOWN

In considering the anti-union tactics of the employees some mention should be made of the company town, although the company town is not in itself an anti-union tactic. It was not fathered by the employer's desire to crush the union, but was shaped into a means of fulfilling this desire by peculiar industrial conditions. Since it has come to serve the purpose, however, of weakening and sometimes destroying the union, it has a rightful place in any discussion of the employers' relations with trade unionism in spite of its innocent origin.

Company towns are not all alike, although if a strict meaning were given to the term, they would be in the sense of being practically owned by a single company. The term probably should be used to include also the type of town which, although not owned by the company, is dominated by it to such a degree that the effects are practically the same. Sometimes these towns are completely isolated from other communities. A raw material such as coal does not always take the pains to locate itself with due regard for the comfort and convenience of those who are going to mine it and burn it. In many cases it has been found more economical to take the coal to the factories rather than the factories to the coal. Where this is the procedure, coal mining is the only industry in the place and the company will probably own the whole town, including the houses in which the miners live and the stores which furnish them their food and clothing.

In other cases the company does not own the town but does own the dominating industry in it and consequently is able to wield a great deal of influence. Clustered around Pittsburgh are a number of unincorporated towns in which the steel mill is the big industry. There are other manufacturing plants and there are independent retail stores, but steel dominates. These towns are steel towns. Somewhat different is the typical manufacturing town of the south. Often the mills are placed outside the town or city limits, and mill villages have grown up around them. These villages are not always dominated by a single mill; but when there is more than one, the mill owners may cooperate as far as their labor policies are concerned. The residents of these mill villages do not have access to the educational, recre-

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<sup>16</sup> The findings of the committee have been effectively summarized by Leo Huberman in *The Labor Spy Racket* (Modern Age, 1937).

ational, and other civic advantages afforded by the near-by town. If such advantages are to be provided at all, they must be provided by the mill owners, and in most cases they are.

Perhaps the New England manufacturing town should be added to the list, differing as it does from the Pittsburgh suburb in that usually there is more than just one company dominating it, and from the southern mill village in that the mills are located within the town limits, thereby removing the necessity for the workers to depend solely upon their employers for their cultural and recreational opportunities. Here the control of the employers over the workers is less direct and complete, and is exercised in more subtle ways, but nevertheless it is there and the workers are seldom free from the consciousness of it.

When the town is literally owned by the company, control is easy. The completely isolated industrial community is not very prevalent in the United States but it has been plentiful enough to show what the militant employer might do were he in complete control everywhere. In these towns has been found an opposition to unionism of the most direct and intense kind, backed up and made effective by a deadly instrument in the form of company ownership of the workers' homes. Before the individual worker was protected by the provisions of the National Labor Relations Act, if a man was found to be an agitator or a union sympathizer, he was not only discharged, but was evicted also, and none of his friends dared take him in lest they too might be evicted. The company thus held a weapon that made even the most intrepid of the workers think twice, or perhaps three times, before questioning the employer's will.

The possibilities of such a situation are revealed in an experience recounted by John Fitch, who writes, "I had a very vivid illustration, a few years ago, of how watchful in this respect the coal companies in the non-union districts are. Having taken a train out of Birmingham, Alabama, to the near-by coal country, I got off at a station in a mining camp and began walking through the camp, conversing casually with such persons as I met in the back yards or on porches, about the work of the mines, hours, wages, housing, cost of living, etc. In a short time I was met by a blustering person who demanded to know my business. I told him what I was doing, and he ordered me from the camp. He told me that he was the camp marshal, and that if I did not leave he would arrest me as a trespasser for walking on streets owned by his employer. I obeyed his orders and started down the public road in the direction of another camp owned by another company. As I was walking along, I passed by my friend of the first camp, riding furiously on horseback. When I arrived at the entrance of the second camp

there was a reception committee awaiting me, consisting of the marshals of the two camps. The men, armed very prominently with large revolvers, told me not to enter the camp. The marshal belonging to the second camp, who was not altogether unfriendly, agreed that as I described myself I was quite harmless, but my story might not be true. I might be a union organizer and I might be trying to hire labor. In either case I would be considered undesirable by his employer, the coal company, and since he was paid to keep undesirables out, he would have to keep me out. What I ought to do, he said, was to get a pass from the manager in Birmingham. If I were to bring that he would be glad to let me visit their village, where six hundred American citizens were living."<sup>17</sup>

It is quite obvious that under such conditions no union could survive. The workers belonged to the company almost body and soul. With the passage of the National Labor Relations Act, however, many of these abuses have disappeared. Union organizers can now visit even isolated company towns for the worker's right to join the union is now protected against interference. Even the federal law has not given workers full protection from the vigilante activities of local citizens and many charges of unfair labor practices have been made because of the illegal interference with the rights of organization made by anti-union citizens and officials of cities and towns. Major Shields of Johnstown, for example, is reported to have received \$30,000 from an official of the Bethlehem Steel Company during a steel strike, and the mayor of Lumberton, North Carolina, himself an employee of the local mill, led a mob attack on a union organizer.<sup>18</sup>

It must not be assumed that the existence of the conditions described implies an indifference on the part of the employer toward the well-being of his employees. Very possibly he expends money rather lavishly on hospitals and medical care, libraries, churches, recreational activities, and the like. Moreover, one reason why he does not want the union to come in may be that he sincerely believes he can provide for the needs of his workers better than the union can. But for our purpose the significant fact is that whether or not these various advantages are provided, the company town affords the employer peculiarly good opportunities to fight unionism, and that in the past he has effectually utilized these opportunities. Of course it must be remembered that the existence of a company town is not proof that such anti-union activities are being carried on.

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<sup>17</sup> John Fitch, *The Causes of Industrial Unrest* (Harpers, 1924), pp. 197-198.

<sup>18</sup> Joseph Rosenfarb, *The National Labor Policy and How It Works* (Harpers, 1940), p. 95.

## CHAPTER XIII

### MEETING THE WAGE-EARNER'S GRIEVANCES

#### PERSONNEL MANAGEMENT

Modern industry, recognizing the grievances of labor, has attempted to meet these grievances through the functioning of well-organized personnel and labor relations departments. The personnel manager today is no longer the retired minister or Y. M. C. A. secretary, nor a social worker going about doing good. He is a man well-trained in industrial psychology and in the scientific methods for discovering and correcting, so far as an individual firm can correct, the policies of his company which have given rise to labor's grievances.

#### *(a) Employment*

In the past the worker was likely to find that his first grievances arose when he was hired. He stood at a long line at the factory gate and the foreman or superintendent would come down the line, selecting the person who looked satisfactory to him. The men selected would go into the plant and the others would go on to the next line, always hoping they would get some job they could do. Such practices are still found, but the prospective employee today usually reports to the Company's employment office. Here he finds a well-lighted room where he is greeted by a trained interviewer who talks with him either in a private office or at a desk set in the room so as to provide the greatest possible privacy. If he has to wait, there are chairs or benches for him to sit on.

The interviewer has been told by the foreman and superintendent of the plant in which job classifications there are openings. Furthermore, the interviewer has studied or has helped to develop specifications for all the jobs in the plant. The interviewer, for example, will know the amount of education needed to fill each job successfully and will know the skills required for each job in the plant. From the interview and from the application blank which the prospective employee completes, the employment manager will seek to assign the man to the place he can fill best.

As an aid to such a program, many industries today are using various types of tests, sometimes developed by their own staffs, but more often

drawn up by other companies who specialize in test construction. Such tests may be for specific skills or they may be for aptitudes for particular skills. One test, for example, may test a man's ability to read blueprints or a slide rule. Another test seeks to find a man's possibilities as a machinist by testing his use of his hands in transferring a set of pegs from one board to another, using tweezers in the operation. Still another type of test is being used by some plants to see whether the applicant is a good psychological risk for employment, that is, whether the routine of factory life is likely to be too much for him or whether he is likely to be a loyal employee.

Before the worker is finally placed on the job, many companies require a thorough physical examination, again with the purpose of matching the worker and the job. A man with heart trouble should not be placed on a job where such sudden attack may mean falling into a machine. Nor should a worker with a hernia be placed on a job requiring heavy lifting, or a man with defective eye sight be used on jobs where keen sight is needed. Yet in the past many such misplacements were made with unfortunate results both to the worker and his fellows.

A worker who has thus been carefully selected and placed on a job should be a better worker who will have fewer grievances about his job because he is doing the kind of work for which he is mentally and physically suited. He may also have the idea that the company for whom he is going to work recognizes his value as an individual producer because they have taken such pains in hiring him.

Unless an employee is treated properly after he is hired, however, all the good effects of careful employment will be lost. Recognizing this fact, modern personnel management provides procedures for following-up the man on the job.

Either before he starts to work or within a few days of his employment, the new worker in a modern plant goes through what is called an induction program. This program starts when the employee is taken to his new job and introduced to his supervisor, who in turn introduces him to his fellow workers. Either the employment manager or the supervisor explains the policies of the company, tells the worker about the shop rules, talks to him about safety, shows him where the washroom is, and endeavors to answer any question about the job or the working conditions. Personnel departments often follow up such interviews several times during the first few months of employment to insure complete understanding and to locate any potential grievances. Many induction programs include lectures, moving pictures, and tours of the plant in order to show

the worker what the company makes, how to avoid accidents, and where his job fits into the whole process.

Of great importance in modern personnel practice is the maintenance of safe and sanitary working conditions. The labor codes of all the states make provisions for a minimum amount of safety and sanitation, but industry today knows that the worker has far fewer grievances if his working conditions are satisfactory. The modern plant with shining wash and shower rooms, replete with liquid soap and sanitary towels is certainly a better place to work than the old-fashioned plant where rest rooms and washing facilities were considered merely devices to enable the employees to do more loafing on the job.

### *(b) Safety and Health Programs*

It is in the field of safety, however, that modern industry has made the greatest strides in meeting the wage earner's grievances. Obviously, a good safety program pays, for compensation insurance is cheaper for concerns having good safety records. Nevertheless, the safety program is also designed to meet the needs of the workers for better working conditions.

Safety training starts with the induction of each new worker who is often shown a film depicting the accident hazards in the particular plant or industry. Then the new worker receives a safety handbook setting forth certain safety rules, such as the wearing of goggles, and describing safety practices, such as the best method for lifting. His training in safety continues for as long as he is employed. Before him from time to time will appear posters calling his attention to safety. Perhaps he will be a member of the plant or department safety committee which examines the cause of every accident. Perhaps, if he refuses to wear goggles because they bother him, he will be handed a glass eye by the safety engineer and told to think over his momentary discomfort from wearing unbreakable glasses. In the large Frigidaire plant in Dayton, Ohio, each supervisor is expected to talk about safety to each employee at regular intervals. In that same plant there are large departments in which no one is allowed, not even the plant manager, unless he is wearing goggles. Meanwhile, safety engineers are constantly searching for new ways to protect the workers from machine hazards. Punch presses, for example, which are dangerous to the hands and arms of the operators are being made safe to hands by a device requiring that both hands be on operating buttons before the press drops and another device that stops the fall of the press immediately if one hand is removed from that button.

That much remains to be done in making its safe to work has been clearly shown in a previous chapter,<sup>1</sup> but management today recognizes clearly that the worker has a real grievance unless he is provided safe and sanitary working conditions.

Many companies make provisions in their personnel programs for hospital and medical service. This service has developed very rapidly during recent years until it has come to be regarded almost as a necessity. Emergency hospitals are provided by many concerns. Very often they are furnished with the most elaborate equipment, including operating rooms, various special treatment rooms, X-ray rooms, and the latest appliances of all kinds. A number of concerns employ surgeons and physicians who are fully qualified to do all the necessary surgical and medical work. Dental treatment, physical examinations, and visiting-nurse service are sometimes provided by industrial concerns.

The National Industrial Conference Board found that of the 2700 companies studied, all provided some type of medical care and 1142 or 42.3 per cent of the establishments maintained a dispensary or a hospital for their workers.

### *(c) Training Programs*

Fully appreciative of such programs to better the physical working conditions of the plant, the worker may, nevertheless, have grievances concerning wage administration and promotion, and he may feel that lack of training is keeping him from getting the best out of his job. Training programs have become an important part of every personnel department.

Under the old craftsmanship system the workman learned his trade as an apprentice and to a very large extent the union assumed the responsibility for his training. But with the development of large-scale industry and the increasing demand for semiskilled labor, this system has broken down and the employer has been forced to provide something to replace it. Training outside the shop has proved to be unsatisfactory, for the average employee after his full-day's work has neither the inclination nor the physical energy to study his trade. Any satisfactory training must take place during the working day. Apprenticeship schools and general educational courses have therefore been established in numerous factories and mercantile establishments. Many men must be given some kind of training before they are competent to do even the more simple unskilled work; others desire advancement, and the employer has found it advantageous to offer

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<sup>1</sup> See Chapter III.

the training which makes it possible to recruit his workers from his own force.

"Vestibule schools" are maintained by many large companies, chiefly for the purpose of training men for repetitive jobs, although in some cases this type of school has been utilized successfully to furnish training in the operation of the different kinds of machines. Many corporations have established apprenticeship schools where the employee can learn the entire trade; and those which employ large numbers of foreigners, particularly, have found it profitable to offer a general education. Inability to read or understand English leads not only to accidents but to general inefficiency through misunderstanding and misapplication of instructions. A great many concerns maintain libraries of technical books and magazines as well as reading matter having a more general interest. Among the important functions of an educational program is the training of executives and foremen, which has proved to be a wise, not to say, a necessary, expedient from the point of view alike of technical efficiency and labor policy. Much of the trouble that has grown out of personal relationships in industry can be traced to the utter inability of the executives and the foremen to understand and to handle skillfully the men working under them. Moreover, if personnel administration is to make a genuine contribution to the development of a sound labor policy, the executives in immediate charge of the working force must not only be in sympathy with the program themselves but must comprehend it thoroughly.

During the past war great impetus was given to the training of workers through the efforts of the War Manpower Commission. Many employers, having learned the advantages of formalized instruction for new and old workers, will no doubt continue to expand that portion of their personnel work.

#### *(d) Transfer and Promotion*

Equally as important as hiring and training is the matter of transfer and promotion. The personnel department is bound to make a mistake now and then in placing men in the plant, but with proper care many of these mistakes can be rectified without great loss to either employer or employee. The fact that a man fails at a job for which he is unqualified does not prove at all that he will fail at some other kind of job. Under the old plan, if it may be called a plan, the man would be branded a failure and discharged. Under the new it is the personnel manager's function to find out whether he has merely been misplaced or whether he is



generally incompetent. Transfers may take place for any one of a number of reasons. Sometimes they are used to relieve the monotony so prevalent in modern industry. A change of jobs within the plant may put new life into the worker, not only to his own benefit, but, through his increased efficiency, to the employer's benefit as well. Sometimes the needs of one department temporarily rise as those of another fall, and when this happens the personnel manager can step in and make the necessary adjustment without going outside the plant.

One of the most frequent causes of friction and unrest among employees is a feeling (not always unwarranted) that advancement to better positions is determined by favoritism and discrimination on the part of the foreman rather than by competence, faithfulness, length of service, and other more proper considerations. Men have been brought in from the outside and given the preferred positions for no other reason than that the foreman had a grudge against the man next in line for promotion. It is one of the important functions of the personnel department to prevent these injustices and to place the matter of promotion upon a fair basis. Not all men can be promoted; but when a man is disappointed, care is taken to explain to him just why he was passed by and suggestions are made as to how he can overcome his deficiencies.

In organized plants the question of wage administration is a problem for collective bargaining, but, whether in an organized or unorganized factory, the proper rating of jobs is an integral part of a balanced personnel program designed to minimize employees' grievances. At the heart of wage administration is a system of job evaluation, which may be defined as a method whereby the work requirements of all jobs are expressed in common factors, such as skill, responsibilities, supervisory responsibilities, effort, and working conditions. These factors are given relative weights and are used as a measuring stick by which each job is rated against the others. In this way, by breaking down each job into elements for which payment is usually made, jobs may more readily be compared one with another. Presumably the historic wage structure of an industry would be an excellent guide for studying such rate of differentials, but the raising of minimum rates by law has often led to distortion of what might otherwise have been a good wage structure because rates above the minimum were not properly adjusted. Job evaluation, if carefully and properly done, affords an excellent procedure for establishing the proper pay for different jobs, given, of course, the total amount of the firm's pay roll.<sup>2</sup> Once established, the

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<sup>2</sup> For further discussion of job evaluation see Asa S. Knowles and Robert D. Thomson, "Management of Manpower" (Macmillan Co., 1943), Chapter VI.

program of job evaluation must be kept current as conditions change and new jobs are added.

*(e) Grievances*

Finally, employers, even in unorganized plants, have recognized that on-the-job grievances must be disposed of if friendly industrial relations are to be maintained. Workmen have often felt that their employer was deaf to their grievances. What is nothing but a molehill to the employer often appears a mountain to the industrial employee. Moreover a grievance when neglected tends to fester and grow to great proportions, whereas if given a sympathetic hearing it will oftentimes melt away altogether. Under the old plan these matters were left almost entirely in the hands of the foreman, even the exacting task of hiring and firing. The employer has from the beginning insisted upon his absolute right to hire and fire, and this power he delegated to the foreman. The old-time foreman knew little about the psychology of handling men and was quite prone to let his authority make him bumptious. A number of plans for dealing with aggrieved workmen are in use nowadays, but the essential feature of all of them is that they keep a channel open between the employer and the employee so that the employee can air his grievances and know that they are being given some sort of consideration. Often very desirable employees have left a company because of dissatisfactions with particular conditions that might easily have been set right had the employer been aware of their existence and their effect upon the workmen. Employers are fast coming to realize that workmen leaving the company because of dissatisfaction have much the same effect upon it as dissatisfied customers.

*(f) Welfare Work*

Closely associated with the methods described above, which are used to meet to some extent the possible grievances on the job, are the programs designed to make the worker's life as a citizen in the community more pleasant. Such large corporations as the United States Steel Corporation and the Standard Oil Company of New Jersey spend thousands of dollars annually in the maintenance of welfare work. Some companies have gone so far as to provide almost every comfort imaginable for their employees. An example is the Endicott-Johnson Company, which employs some 16,000 workers, and is the largest concern in the world manufacturing shoes for men and boys. This company builds homes for the workers and sells them at cost or below. It has established an elaborate medical department

that furnishes all kinds of medical services free to the employees and their families. There are three well-equipped hospitals; and 27 full-time doctors, 51 nurses, three full-time dentists, one refractionist, and two nose and throat specialists. A baby clinic is also maintained. During one year there was a total of 180,000 calls made by doctors and nurses at the homes and by patients at the hospital, an average of 11.2 occasions on which medical aid was rendered to each worker's family. The total cost of the medical service for that year was \$398,000. When an employee dies, his family is taken care of by the company, sometimes by payment of the full amount of the deceased's wages until the family is able to provide for itself. Aged workers are cared for in the same way.

Recreational activities became very popular among industrial concerns during the First World War, but declined somewhat after that time, apparently because of a lack of interest on the part of the employees. More recently, with the reductions in hours of labor, recreation programs have again become popular.

For example, in a recent survey covering 2700 establishments and employing approximately 5,000,000 persons, the National Industrial Conference Board found that 1204 of the companies sponsored athletic teams, 1009 provided picnics and outings, and 411 furnished club houses or rooms. Since the Board's earlier study, the greatest increase has been in employee's clubs.<sup>3</sup>

#### PLANS FOR ECONOMIC BETTERMENT

Cooperative effort between the man on the job and the employer in programs for economic betterment is another part of the modern program of industrial relations. Such plans include industrial pensions, employee savings plans, group insurance, mutual benefit associations, and profit sharing.

##### (a) *Industrial Pensions*

Although the Social Security Act of 1935 provided for a system of old-age pensions,<sup>4</sup> many industrial companies have continued their own systems of pensions in modified form. In fact, only one out of every ten formal plans studied by the National Industrial Conference Board has been abandoned since the passage of the Act and many new plans have

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<sup>3</sup> National Industrial Conference Board, *Personnel Activities in American Business*, Studies in Personnel Policy, No. 20, 1940.

<sup>4</sup> See Chapter XX.

been started since that time.<sup>5</sup> Pension plans have for many years been an important part of industrial relations programs whether because of a realization of the responsibility of industry for the aged worker or because of a belief that the policy would be profitable, in the long run if not immediately.

It is quite likely that from the very beginning of industrial enterprises some employers have made some provisions for aged employees who have faithfully served them for a number of years. The first formal pension plan to be adopted in the United States was set up in 1875 by the American Express Company, and in 1915 essentially the same plan was still in operation. In 1918 the express business was transferred to the American Railway Express Company, which continued to pay pensions on an informal basis. In 1929 this company was taken over by the Railway Express Agency; but, although a committee was appointed to formulate a plan, nothing had been done by the end of the year. The old American Express Company adopted a new plan in 1921 and has continued to operate it in spite of a number of mergers. The second formal plan to be established in the United States was that of the Baltimore and Ohio Railroad, instituted in 1884.

A few other plans were put into effect before 1900, but for the most part the plans now in force have been established since the opening of the century. Some of the more important are those of the Pennsylvania Railroad (1900), the Canadian Pacific Railroad (1902), the Union Pacific System (1910), the Philadelphia Rapid Transit Company (1911), the Commonwealth Edison Company (1911), the General Electric Company (1912), the American Sugar Refining Company (1912), the American Telephone and Telegraph Company (1913), the Standard Oil Company of New Jersey (1918), the Eastman Kodak Company (1929), and the Standard Oil Company of New York (1931). In 1916 the Bureau of Labor Statistics listed 117 plans as being then in operation by private companies. Sixty-nine of these had been established between 1910 and 1916.

Writing for the Bureau in 1926, Mary Conyngton stated that it is difficult to make a valid comparison between the systems in operation in 1926 and those in operation in 1916 because in a number of cases a single plan had been extended to cover a number of allied enterprises. For example, in 1916 five pension plans were maintained by the telephone and telegraph companies, while in 1925 there were only two, but these two

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<sup>5</sup> National Industrial Conference Board, *Company Pension Plans and the Social Security Act*, Studies in Personnel Policy No. 16 (1939).

covered telephone and telegraph companies in practically every part of the country and applied to about 280,000 persons. Miss Conyngton concluded that "it is impossible even to guess at the number of employees brought within their scope."<sup>6</sup>

According to Mr. Murray Latimer, who made an exhaustive survey of industrial pensions for Industrial Relations Counselors, Inc., railroads, public utilities, iron and steel, and oil companies, the earliest industries except banks to adopt pension plans, were still responsible for the maintenance of the bulk of those in operation in 1929.<sup>7</sup> Four hundred and twenty-one plans had been established by 1929 (120 during the period 1916-1920) and 397 were still in operation. Mr. Latimer believed that it was impracticable to approximate the proportion of all employees in the different industries who were covered by the pension plans. He did attempt to give a maximum figure. He estimated that the entire group of 364 companies in the United States had 3,750,000 employees protected by pension plans in 1929, or just over 14.4 per cent of all in these occupations. But it must be remembered that this is a maximum figure and that if errors could be corrected most of the changes would tend to reduce this percentage.<sup>8</sup> According to the Metropolitan Life Insurance Company there were in 1933 more than 600 companies, having about 5,000,000 employees, which had formal pension plans in operation.<sup>9</sup> The National Industrial Conference Board found that at the end of 1938 approximately 600 group-annuity plans were in force, but the Board added that accurate statistics of the total number of plans of all types were not available.<sup>10</sup> The Industrial Relations Counselors found that 515 plans were in operation in 1938.<sup>11</sup> As far as industrial distribution is concerned Mr. Latimer was reasonably certain that about 82 per cent of the Class I railroad employees in the United States were under formal pension plans. The comparable percentage in cable, telephone, and telegraph companies was 90; while about half of those employed in street and electric railways and in electric light, heat, and power companies were so covered. The construction, motion picture, and automobile repair industries had not as yet been touched

<sup>6</sup> Mary Conyngton, "Industrial Pensions for Old Age and Disability," *Monthly Labor Review*, 22:22 (Jan., 1926).

<sup>7</sup> Murray Latimer, *Industrial Pension Systems* (Industrial Relations Counselors, Inc., 1932), p. 41.

<sup>8</sup> *Ibid.*, p. 55.

<sup>9</sup> Metropolitan Life Insurance Company, *The Problem of Old Age Dependency*, Monograph 13 on Social Insurance, p. 45 (1933).

<sup>10</sup> National Industrial Conference Board, *Company Pension Plans and the Social Security Act*, Studies in Personnel Policy, No. 16 (Dec., 1939).

<sup>11</sup> Murray Latimer and Karl Tufel, *Trends in Industrial Pensions* (Industrial Relations Counselors, Inc., 1940), p. 7.

by formal pension plans; and the coverage of mine and quarry workers and employees of chain stores, department stores, and hotels and restaurants was negligible.

Pension plans are found mainly in companies of large size. In 1933 four companies, each having 100,000 employees or more, employed about one-fourth of the employees covered by pension plans. Sixty-nine per cent of employees so covered were employed by companies having 25,000 or more employees each.<sup>12</sup> Both the size of a corporation and its age seem to have been important factors in the establishment of a pension plan.

Pension plans may be classified in a number of ways. One distinction which should be made is that between informal plans and formal plans. A number of concerns have not set down explicit requirements which, if fulfilled, will entitle any and all employees to participate, preferring rather to handle each case as an individual matter. The obvious advantage of this method, from the employer's point of view, is its flexibility. He recognizes that unforeseen misfortune is apt to overtake any man, but he inclines to the view that an assured pension will tend to produce thriftlessness. Under a flexible plan he can at least try to distinguish between those who are able to care for their old age out of their own wages and those who have suffered reverses which are severe beyond the ordinary course of things. With this obvious advantage goes an equally obvious limitation. An informal method is necessarily impracticable for the large concern where the employer cannot possibly handle each case personally; for as soon as he delegates the responsibility, he opens the way to discrimination and favoritism. The large concern has no choice but the formal plan.

Formal pension plans are usually considered to be of two main types—contributory and noncontributory. It is contended by some that in actual practice the difference between the two types is not as great as it appears to be at first sight. It is argued that the employee really contributes in both cases.<sup>13</sup> The civil service employees of England were so sure that he does that for years they strove to have their pensions changed from a noncontributory to a contributory basis. They held that they were actually contributing in either case; but that under the contributory plan their share in the contribution was recognized and gave them a better claim on the accrued interest in the fund.

<sup>12</sup> Metropolitan Life Insurance Company, *The Problem of Old Age Dependency*, Monograph 13 on Social Insurance, p. 57 (1933).

<sup>13</sup> Compare statement of Pension Laws Commission of the State of Illinois, quoted by Mary Conyngton in "Industrial Pensions for Old Age and Disability," *Monthly Labor Review*, 22:22 (Jan., 1926).

It is interesting to note in this connection that Mr. Latimer found that "in 1927 the pension bills had not tended to reduce the wage bills of companies maintaining pension plans; that is, in those organizations which have established and carried on pension systems, the wage bill in the past would have been what in fact it was even had there been no pension plan. In other words, pensions by and large have been paid from profits." But he hastens to add, "The fact that pension bills for the most part have been only a small proportion of the payrolls and of total production costs possibly has been chiefly responsible for this situation. . . . It seems inevitable that sooner or later the burden of the pension systems must be shifted in whole or in part."<sup>14</sup> For descriptive purposes, however, the terms contributory and noncontributory will be used even though the distinction is largely an artificial one.

Formal plans may also be classified as group-annuity plans or self-administered plans. In 1925 most of the plans were of the self-administered type, the employer reserving the right to reduce or terminate the allowance in individual cases, or to modify or abandon the plan. Occasionally, if the plan has a contributory feature, the employer at least contracts to return the worker's contribution. Since the depression the self-administered plan has become the exception, and the group-annuity plan administered and underwritten by an insurance company has become popular. Such a plan is fully contractual and the discontinuance of a plan by an employer in no way affects the annuities previously purchased.

The typical plan in the United States has been noncontributory. In 1929 there were 307 of that type in operation, covering more than 3,500,000 employees. There were eighty-six contributory plans and but four composite plans, the former covering about 147,000 employees and the latter 13,463.<sup>15</sup> However, there is a recently developed tendency toward an increase in the number of contributory and composite plans. From 1901 to 1905 the percentage of contributory plans adopted was 17.4 and for the period 1906 to 1910 the percentage was 13.4. The low point for contributory plans was reached in the period 1911-1915, when only about 10 per cent of the new plans were contributory. Since then the percentage has risen steadily until in the period 1926-1929 almost 66 per cent of the new plans were contributory.<sup>16</sup> The move toward the group-annuity method of administering pensions has apparently discouraged the trend of noncontributory plans.

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<sup>14</sup> Murray Latimer, *Industrial Pension Systems* (Industrial Relations Counselors, Inc., 1932), p. 784.

<sup>15</sup> *Ibid.*, p. 48.

<sup>16</sup> *Ibid.*

There are two kinds of group-annuity or reinsured plans. The one, called the "definite benefit" or "unit-purchase" type, provides for an annuity of fixed amount with fixed contributions by the worker, the employer's contribution being the variable factor. The other, called the money-purchase plan, provides for fixed contributions by worker and employer with the size of the annuity the variable factor. The Conference Board's study shows the "definite benefit" type to be more popular than the money-purchase plan.<sup>17</sup>

The plans commonly apply to all the employees of the company, although some companies, in attempting to supplement Social Security benefits, have excluded younger workers and those receiving less than a specified wage or salary. It was felt that those thus excluded were proportionately better cared for by the federal act.

Practically all the plans have age requirements and the self-administered plans still retain a continuous service requirement. Plans revised to supplement the Social Security Act commonly set the age for retirement at 65. Since the plans are now largely of the group-annuity type, however, the worker is usually now given the right to retire within limits at any earlier age at a reduced pension no matter what his length of continuous service may be.

By the end of 1939 a considerable number of company pension plans had been adjusted to take into consideration the Social Security Act. The most important of these changes has been the reduction in the size of the benefits and, hence, of the contributions. A second trend was the shift already mentioned from noncontributory self-administered plans to contributory group-annuity types.

The usual method of determining the amount of pension to be paid is to set a certain percentage of the average salary for a specified period and then multiply this by the number of years of service. The plans studied by the Bureau of Labor Statistics showed a percentage range of from 1 to  $2\frac{1}{2}$ ,<sup>18</sup> and more recent studies of the National Industrial Conference Board indicate little change of rates. Under the self-administered plans, the average annual salary for the ten or fifteen years preceding retirement is usually used in computing the pension. Group-annuity plans are computed on the salary received during the work period. Since the passage of the Social Security Act, many companies have adjusted the contribution base to provide more of a pension for workers receiving over \$3000 a

<sup>17</sup> National Industrial Conference Board, *Company Pension Plans and the Social Security Act*, Studies in Personnel Policy No. 16 (Dec., 1939).

<sup>18</sup> Mary Conyngton, "Industrial Pensions for Old Age and Disability," *Monthly Labor Review*, 22:46 (Jan., 1926).



year, the top amount upon which the federal annuities are figured. It is difficult to find out the exact amounts finally paid to employees because the companies are reluctant to furnish the data. Mr. Latimer found that, on the basis of estimates of the number of pensioners and amount of pension payments in 1930, the average per capita pension in 1930 was from \$700 to \$710 per annum, an increase of about 11.5 per cent over the 1927 figure.<sup>19</sup>

In a number of companies having self-administered plans, provision is made for disability pensions. Usually the disability must be permanent and total, although a few concerns make provision for partial disability. There is seldom an age requirement for this kind of pension, but often there is a service requirement. Usually the pension is limited to the life of the pensioner, although a very few companies make payments to the dependent widow or minor children for a brief time.

The annuity type plan, on the other hand, provides no disability pension except perhaps a reduced annuity payment if the disability occurs within a fixed period before retirement. Such plans do, however, carry death benefits consisting of the amount of the employee's contribution sometimes with and sometimes without interest. A recent development in annuity plans is the widespread adoption of "vesting" rights. That is, the employee who leaves or dies before the benefit payment starts has a right for himself or his estate, not only to his own contribution but to the contribution of his employer as well.

What contributions have industrial pensions made to the improvement of industrial relations? What were they expected to accomplish?

The company, among other things, wants continuity of service. Practically every formal plan includes a service requirement. No precise statement can be made concerning the effect of pensions on labor turnover, since for various reasons no extensive investigation of this has been made, but prevailing opinion among students of pension systems is overwhelmingly to the effect that pensions tend to stabilize employment only among employees of middle age. And these, of course, are the very ones who are least likely to leave the service on their own volition anyway. It would, of course, follow that if employees could not be held by pensions, they could not be attracted by them. Mr. Latimer is of the opinion that under existing conditions, if the employer's main aim is to attract men of superior capacity, retain them in the service, and strengthen the morale of active employees rather than to achieve pay roll relief by retirement of the aged,

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<sup>19</sup> Murray Latimer, *Industrial Pension Systems* (Industrial Relations Counselors, Inc., 1932), p. 224.

it can do this more effectively by increases in current wages. Experience thus far has demonstrated that the younger workers are but little affected by the prospect of a pension, that wages are a much more important factor to them.

It is rather difficult to determine the motives underlying the introduction of pension systems, but on the whole it may be safely concluded that they will not be continued unless the employer is convinced that they "pay in dollars and cents." The following is a sample expression of purpose: "These benefits are granted voluntarily by the company in order to attract to its service a high grade of employees; to encourage continuity of service, and to obtain the benefits of the increased efficiency therefrom. . . ." <sup>20</sup>

There is no doubt that the employers expected substantial economies to result from the use of pension plans. They have been somewhat vague as to just how these were to be effected and how extensive they expected them to be, a vagueness which is easily explained by the difficulty of allocating the costs and measuring the benefits of pensions. In general, it was anticipated that pensions would make it easier to rid the company of workers no longer efficient, open up channels of promotion, and improve morale with resulting increase in efficiency. Few companies, however, have attempted to measure the extent of the gains they may have made as a result of their pension systems. In the course of the Industrial Relations Counselors' survey only two companies were discovered that had made any such study. These reported substantial savings. Their plans, however, were somewhat unusual in that the one set a relatively low retirement age and the other provided pensions for incapacity only. Furthermore, Mr. Latimer believes that the savings indicated by the studies are overstated because the fact is ignored that pensions are payable for life, when as a matter of fact most employees are retired before death in any case. He is of the opinion that although the figures for companies in general indicate pay-roll savings to cover a considerable part of the pensions annually granted, they are not necessarily reliable and do not warrant the conclusion that pensions are largely paid for by such savings.

Turning to the employers themselves, we find that some are very enthusiastic about the results they have obtained, whereas others are frankly disappointed. One important reason why some are disappointed is that the costs are greater than they had anticipated—and the cost at least are

<sup>20</sup> National Industrial Conference Board, *Industrial Pensions in the United States*, p. 24 (1925).

tangible. One company reports its pension payments for 1913 as \$37,031, for 1921 as \$199,100—more than five-fold increase in eleven years.<sup>21</sup>

Failure to provide a sound financial basis has probably been the chief cause of disappointment. The cost proved to be greater than the company had expected and available funds were inadequate to meet it. To protect themselves against this contingency the employers usually resorted to a provision reserving to themselves the right to modify or abandon the plan. Such a provision was not an unmixed good even for them. It made the whole system seem very precarious and the employers need not have been surprised when this uncertainty imparted itself to the labor force, producing an uncertain morale and thus tending to destroy one of the benefits that the system was created to build up. Under the newer group annuity plans, the employee retains the contributions already made even though the company decides to discontinue the plan.

Any measure having the social significance of industrial pensions is not to be evaluated, of course, merely in terms of the employers' satisfaction or dissatisfaction. It is one thing to bring about ends desired by the employer—greater loyalty, lower turnover, and increased efficiency; it is another to protect the interests of the workers and to meet satisfactorily a crying social need. Have industrial pensions done this? It must be said that on the whole organized labor has not welcomed the system of industrial pensions with any great enthusiasm, although up to the present no systematic campaign has been made against them. The opposition has taken the form mainly of passing resolutions. This may be due largely to the fact that until recently, except on the railroads, the unions have rarely come into direct contact with pension systems.

Probably the most important objection raised by organized labor is that the pension system restricts collective action. Provisions similar to the following are very common: "Employees who leave the service of their own volition or under stress of influence inimical to the company or when their services are required by the company, or who are for misconduct discharged by the company, thereby lose all benefits of the pension system."<sup>22</sup> One company explicitly states that "employees who leave the service under strike orders forfeit all claims to pension benefits," whereas another limits pensions to employees who "have not engaged in demonstrations detrimental to the company's best interests."<sup>23</sup> Here again, however,

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<sup>21</sup> Mary Conyngton, "Industrial Pensions for Old Age and Disability," *Monthly Labor Review*, 22:51 (Jan., 1926).

<sup>22</sup> National Industrial Conference Board, *Industrial Pensions in the United States*, p. 64 (1925).

<sup>23</sup> Mary Conyngton, "Industrial Pensions for Old Age and Disability," *Monthly Labor Review*, 22:53 (Jan., 1926).

the contractual group annuity plan with vested rights after a specified period may well allay the fear of pension loss because of labor activities.

Not only are the plans anti-strike in general tenor, but some give the employer the power to call back pensioners as strike breakers. A number of plans contain clauses giving the company the right to revoke pensions at its discretion and a few plans definitely state that the pensioner may be recalled to work in case of need. The fact that pension plans have not seriously interfered with the prosecution of strikes does not remove the unionists' objection. The majority of the companies involved in the steel strike of 1919 and in the railway shopmen's strike of 1922 had pension systems and in neither case did the possible loss of pensions prevent the strikes, although a few of the railroads reached a settlement which included the re-employment of strikers with pension privileges unimpaired but without seniority rights.

Workers have also contended that pensions tend to reduce mobility of labor. We have already seen that they have probably not done this to any extent, that they have been a disappointment to the employers in this respect, but we should note that in so far as they do succeed in reducing labor turnover they are displeasing to the worker. The laborer would to that extent be tied to one job, and would undoubtedly be more subservient and less vigorous in demanding improved conditions because he could not change to a better job without sacrifice.

One further criticism brought by workers and many others against the industrial pension system is that it encourages a low hiring age, and thus reduces the chances for employment of older workers. It is undoubtedly true that older workers are finding it more and more difficult to obtain employment, largely because of the increasing mechanization of industry. Pension systems have grown up during the period when this difficulty has been making itself felt, but that does not prove that they have contributed to it. The survey of Industrial Relations Counselors indicates that on the basis of available data, hiring age limits are about as prevalent in companies which do not have pension systems as in those that do. Furthermore, in many cases, if not in the majority, the limits antedate the pension schemes. It seems safe to conclude that pensions have not been an important factor in restricting opportunities for employment of older workers.

Attention should be called to the following important conclusions reached in the survey of Industrial Relations Counselors, Inc.: "By and large the bulk of industrial pension plans in the United States and Canada are insecure, first, because of inadequate financing; second, because of

the lack of actuarial soundness, even in those cases where some funds have been provided; third, because of failure to provide legal safeguards both in connection with funds and with the preservation of rights for employees; and fourth, because of the absence of definite administrative procedure for carrying out the terms of the plans. Unless the policies pursued by most companies at the present time are changed, there is not much hope for improvement."<sup>24</sup> Moreover, the survey shows the plans in general to be too inflexible for adjustment to particular conditions, and discriminatory in that in too many cases employees of the upper grades are benefited at the expense of the rank and file. It is too early to know whether the changes of the last few years, which have brought an increased number of funded plans, have remedied the difficulties found by Mr. Latimer.

Fortunately industrial pensions have not been handicapped, as have some other industrial relations policies, by the claims of overenthusiastic adherents who insist that they will revolutionize the economic system and solve the labor problem. In the absence of great hopes there have been no great disappointments. Considering the deplorable plight in which so many of the aged still find themselves in this country, industrial pensions when successfully operated must be said to constitute a real social advance and to contain possibilities of taking a most important place in the field of industrial relations. With the coming of federal old-age annuities, company programs will more and more be used to supplement those payments. Since the federal annuities are small at best, company plans may well fill a real need.

(b) *Employee Savings Plans, Group Insurance,  
Mutual Benefit Associations*

1. *Employee Savings Plans.* In an effort to provide more security, employers and employees have cooperated in the establishment of employee savings plans, group insurance, and mutual benefit associations. It is possible, of course, for these projects to be developed entirely apart from the employer and sometimes they have so developed. In general, however, the employer has participated actively in initiating them and in carrying them out, and consequently they have a place in any consideration of the employer's efforts to meet the workers' grievances.

The depression of the thirties showed clearly the lack of reserves on the part of most workers to take care of themselves in any serious

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<sup>24</sup> Murray Latimer, *Industrial Pension Systems* (Industrial Relations Counselors, Inc., 1932), p. 902.

emergency. The experience of that depression probably stimulated the growth of various company plans for employee savings and investments which already had a record of considerable effectiveness in meeting the workers' emergency needs. The increase in income during the war and the efforts of the federal government to keep these larger incomes from causing undue inflation have further stimulated savings and investment plans sponsored by companies.

In a survey of employee savings plans, the National Industrial Conference Board classes them into six general types: (1) pay roll-allotment plans for the sale of United States War Bonds; (2) credit unions; (3) savings plans in cooperation with banks; (4) company savings plans; (5) plans for pooling savings for the purchase of securities; and (6) employee stock ownership plans.<sup>25</sup>

During the war the most popular savings plan was the pay roll-allotment plan for the purchase of United States War Bonds. Spurred on by the Treasury Department, thousands of plants, which never before had sponsored any type of savings plan, provided for weekly pay-roll deductions toward the purchase of bonds. Many workers saved 10 per cent of their wages in this way, and the participation because of the patriotic appeal was very high.

Very few workers can by savings alone accumulate sufficient funds to tide them over emergencies. Recognition of this fact and of the difficulties of low-cost credit facilities for workers has led many employers to sponsor credit unions among their workers. Credit unions, chartered under state or federal laws, are cooperative societies which accept the savings of a group of workers and, using these funds, provide a source of credit for the members at a cost substantially below that charged by most small loan finance companies. Credit unions are operated by the members themselves and company participation is limited. By lending moral support and encouragement, by giving advice when asked, by furnishing office space, and by providing for pay-roll deductions, a company may help this worthwhile type of cooperative thrift among its employees. By the end of 1940 there were over 9000 credit unions in the United States, most of them organized among employees of business concerns.

At one time the most popular plan of savings was that operated in connection with local savings banks. This type of plan has much to be said for it. It puts a minimum of responsibility on the company; the funds are left with the bank, whose specialty it is to care for money; there

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<sup>25</sup> National Industrial Conference Board, *Employee Thrift Plans in Wartime*, Studies in Personnel Policy No. 42 (1942).

is a minimum of detail connected with operating it; and it is more flexible and usually safer than the other types of plans. The chief problem of the employer is to arouse and sustain the interest of the employees. As a matter of fact, in some cases this is the only contribution he makes. In a great many cases, however, he makes regular deductions from the pay-roll upon authorization.

With the great increase in bank reserves and the difficulties of finding profitable investments, banks have been less interested in obtaining the small deposits that most of these plans provided. Added to this difficulty has been the growth of credit unions and pay-roll deductions for war bonds with the result that this type of company thrift plan has grown less important in recent years.

The fourth type of plan provides for the deposit of workers' funds with the company. Introduced to meet the difficulties of limited banking facilities during hours when workers could get to the banks, these plans have become less popular in recent years. The National Industrial Conference Board survey shows very few plans now operating.

The fifth and sixth types of thrift plans involving the purchase of securities either by a pooled savings or direct stock purchase have lost their once prominent place in company savings plans. At one time the purchase of a company's stock by its employees was thought by some to be something quite revolutionary. Professor Carver of Harvard University, for example, in 1925 saw employee stock ownership as a part of a general movement that was bringing about fundamental changes in industrial organization. He wrote, "The only economic revolution now under way is going on in the United States. It is a revolution that is to wipe out the distinction between laborers and capitalists by making laborers their own capitalists and by compelling most capitalists to become laborers of one kind or another, because not many of them will be able to live on the returns from capital alone. This is something new in the history of the world."<sup>26</sup>

The hopes of many that employee stock-purchase plans, designed primarily to encourage thrift, would one day revolutionize industrial relations was rudely shattered when the precipitous decline in stock prices in 1929 wiped out the savings of workers just when those savings were needed to meet the problem of unemployment. Because of the fundamental difficulty that the value of the savings fluctuated through no fault of the

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<sup>26</sup> T. N. Carver, *The Present Economic Revolution in the United States* (Little, Brown, 1925), pp. 9-10.

worker or the company, thrift plans involving the purchase of securities have largely disappeared from the industrial scene.

Probably the greatest contribution of the various types of savings plans is that they foster habits which in themselves are well worth encouraging. Even here a reservation must be made. Savings is not inherently and invariably the right thing to do. In certain circumstances spending may be the wiser course. The need for food, clothing, or medical care in the present may be not only more pressing but actually more important than putting aside a few pennies for a rainy day.

2. *Group Insurance.* The biggest strides have been made in the field of industrial insurance. Group insurance in particular has developed very rapidly of late. It now provides indemnification in case of death, disability, accident, hospitalization, and sickness. Group insurance in force in 1912 was, according to the Bureau of Labor Statistics, about \$13,000,000, and in 1916 it was over \$150,000,000. At the end of 1926 more than 75 companies were writing this form of insurance and the total amount of insurance in force was estimated to be \$5,600,000,000.<sup>27</sup> By 1931 the figure had reached \$9,954,000,000.<sup>28</sup> In two decades, the value of group life insurance policies increased about 1300 per cent, a truly spectacular rise. The depression apparently began to have an effect and in 1932 there was a decline of 8.5 per cent and in 1933 a decline of 3.1 per cent, leaving \$8,911,000,000.<sup>29</sup> Ten years later, in 1943, group insurance in the United States and Canada amounted to \$24,000,000,000.<sup>30</sup>

The great majority of employees have found it impossible to carry adequate insurance, and group insurance was devised to meet this need. The employer can arrange for group insurance where individual insurance would be impossible, because of the lower cost resulting from the wholesale nature of the project.

Group insurance may be classified according to the different risks covered. There are group life insurance, group accidental death and dismemberment insurance, group accident and sickness insurance, and group hospitalization insurance. Group insurance plans may also be classified according to whether the employer pays the total premium or the employer and the employee pay it jointly. The first insurance policies were largely

<sup>27</sup> *Monthly Labor Review*, 24:1228 (June, 1927).

<sup>28</sup> National Industrial Conference Board, *Recent Developments in Industrial Group Insurance*, p. 24 (1934).

<sup>29</sup> *Ibid.*

<sup>30</sup> National Industrial Conference Board, *The Management Almanac*, p. 165 (1945).



noncontributory, but the trend until the war period was toward the contributory. In nearly half of the recent plans, however, the employer pays the entire premium. This noncontributory type has been regarded as paternalistic while the contributory type, in addition to providing a broader basis for the insurance, is thought to contribute to the development of self-reliance and independence. The wartime trend was probably brought about because the wage stabilization policies of the government would not allow certain wage increases but did provide for approval of such plans as group insurance. Having once had their insurance paid, the workers in the future may be unwilling to participate in the contributory plans.

The functioning of group insurance, particularly as it contributes to lower cost, is well illustrated by group life insurance. Group life insurance was defined by the 1918 National Convention of Insurance Commissioners as requiring for contributory plans the participation of at least 75 per cent of the eligible employees. Insurance will not be written on a group life basis for less than fifty persons. This definition became a part of New York State law in 1918. The important thing about group life insurance is that individual selection is practically unnecessary owing to the wide coverage of employees. The high percentage of employees required to participate distributes the risk and the company can thus write the insurance without requiring physical examinations. This materially reduces the cost. Other cost-reducing factors are the lowered expenses of selling the insurance and collecting the premiums, and diminished overhead and clerical expenses. All this follows because only one policy is used regardless of the number of employees included, and because this is handled as a single transaction.

There is no question that group insurance of various kinds holds real possibilities of alleviating some of the hardships of the American wage earner. Its rapid growth testifies to that. The advantages in cost are great enough to make group insurance possible where individual insurance would be out of the question. Insurance of any kind has obvious advantages over any kind of charity. Inasmuch as the employee has a definite legal claim and an assured claim, one of the greatest weaknesses of industrial pensions as formerly used in the United States—uncertainty—is avoided. When the employee makes a contribution, too, the cost to the employer becomes even less burdensome; and according to one estimate, group non-contributory life insurance usually adds only about 1 per cent to the pay roll.<sup>81</sup>

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<sup>81</sup> Industrial Relations Section of Princeton University, *Group Insurance*, p. 14 (1930).

Although group insurance is free from some of the weaknesses that characterize other attempts of the employer to meet the workers' grievances, even it has failed to win the wholehearted acceptance of organized labor. There is a familiar ring to the objection raised by the special committee on insurance in its report to the 1924 convention of the American Federation of Labor: "... There may be humanitarian employers who provide group insurance for their employees with no ulterior motive in their mind, but it cannot be overlooked that group insurance is also a good thing for employers, especially of the non-union type. Nor can it be overlooked that in many instances one of the motives behind group policies is to tie the employees to their job, to prevent or discourage strikes, and that group insurance provided by employers certainly tends to prevent the worker to whom it is given from having a single eye to his own economic welfare.

"... Self-reliance and independence, self-help and cooperation among the workers in their own interests would be certainly increased by the wage earners providing their own insurance rather than depending on the humanitarian impulse of employers."<sup>32</sup> Faced, however, with the impossibility of obtaining satisfactory wage increases during the war, many unions have demanded noncontributory group insurance by collective bargaining agreement.

3. *Mutual Benefit Associations.* Although insurance against sickness is now often covered by a group policy, mutual benefit associations still have a great deal to offer in this field.<sup>33</sup> A great many mutual benefit plans in the past have assumed indemnification in case of death also; but group insurance has largely taken over this function, leaving to the benefit associations the task of furnishing protection against illness. In addition to administering illness insurance, mutual benefit societies often carry on various forms of personnel or welfare work. Sometimes these associations are maintained by the employees without any regular assistance from the firm. A recent investigation by the National Industrial Conference Board indicated that in approximately 58 per cent of the 242 plans studied employers made no contributions. Most of these companies, however, render valuable assistance by assuming a part of the administrative expense. Such associations may well be included in the employers' program for meeting the grievances of labor.

<sup>32</sup> American Federation of Labor, *Proceedings*, 1924, p. 47.

<sup>33</sup> For a detailed explanation of mutual benefit associations, see National Industrial Conference Board, *Health Insurance Plans, Mutual Benefit Associations*, (1938).

In the 248 associations which reported on membership, there was found to be a total of 642,806 members or 76 per cent of the total number of employees. In about half the associations the dues range between 20c and \$1.00 per month, whereas in some they vary according to the wages or the amount of benefits.

The total amounts paid in case of sickness or accident vary according to several factors, such as the rate paid per day and the number of days for which benefits will be furnished. Flat rates have been found to average more than \$8.00 a week.<sup>34</sup> Most associations provide for payments to beneficiaries in case of members' death, the amount ranging generally from \$50 to \$200.

It seems very clear that the mutual benefit associations make a real contribution to the amelioration of the workers' economic condition. Organized labor, to be sure, has condemned benefit associations as paternalistic and as restricting laborers' activities in the protection of their own interests. Attention is also called to the fact that employers who contribute to the fund are quite apt to keep a strong hand in its management. It is alleged, in other words, that the benefit association is in reality not an employees' organization, but just another contrivance for allowing them a semblance of control while the actual power remains in the hands of the employer. The Conference Board, however, reports that it found only one case of violent union opposition and that in most cases the attitude of the union was cooperative.

There is a good deal to be said for the attitude taken by organized labor toward the various schemes for the economic betterment of the workers. It would be far better if they were receiving adequate wages and were in a position to furnish protection for themselves. The union can only be applauded for keeping the wages question in the foreground, as well as the need for independent action on the part of the laborers. On the other hand, realities must be faced. Until recently organized labor has done very little for the great mass of unskilled and low-paid toilers in the United States, and this has not been wholly the result of opposition on the part of the employers. Organized labor itself must accept a large share of the blame. Interested chiefly in the highly skilled and better-paid workmen, it has until very recently ignored almost entirely the group that need its services most and that are benefiting to the greatest extent from these economic betterment plans of the employers.

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<sup>34</sup> Industrial Relations Section of Princeton University, *Mutual Benefit Associations*, p. 7 (1930).

In conclusion it should be reiterated that most employee savings plans, group insurance, and mutual benefit associations are undoubtedly on a sound basis. We need not blink at the limitations in order to recognize that they at least give the employee a legal and fairly certain claim upon the funds. The benefits received are less like gifts bestowed at the whim of the employer according to his private notion of loyalty and his estimate of existing business conditions than they are under the old-age pension plans as we have had them in America. They must indeed be regarded as making a welcome contribution, however small, toward a bettering of the wage-earner's economic status.

### DEALING WITH UNEMPLOYMENT

The point has been made in an earlier chapter that unemployment is without question the greatest fear of workers and is, therefore, one of the most important grievances of workers in our industrial system. Recognizing this fact, employers have made some effort to alleviate unemployment or to help the workers care for themselves through periods when no employment could be had. Most of the relatively slight progress which the employers have made thus far has taken place in the field of seasonal unemployment. And, in fact, it is quite doubtful whether under present conditions the employers alone can do much to remedy cyclical and technological unemployment.

Employers have various methods of reducing seasonal unemployment. They have learned that, although seasonal industry is an essential feature of our economic life, the great ups and downs in employment are not. In some businesses where changes in style are not significant and where the bulk of the product is not so great as to render storage costs unduly high, it has been found possible to manufacture for stocks. Sometimes the production department and the sales department have been coordinated so that they function together. A great deal of the seasonal fluctuation in industry is due to the nature of the demand. Anything that tends to stabilize and standardize the demand will also tend to stabilize employment, and in these days the sales departments have a great deal to do with demand. In a fiercely competitive industry, of course, the sales department must get orders when and how it can, regardless of the effect upon employment. But when the industry has become somewhat stabilized, the sales department can do a great deal toward educating the consumer in more intelligent ways of buying. Sometimes the manufacturer has stand-

ardized his product more completely, thereby fostering greater regularity in buying on the part of the consumer. Some employers have been able to extend their markets to sections where the seasonal demands would dovetail with the seasonal demands of the existing market. Others have undertaken to manufacture a greater variety of goods so that the slack season for one kind of goods would be compensated by the active season for another.

Employers can further prevent unemployment by adopting the principle of the public-works program. Repairs, construction, and installation of new equipment are necessary in any industry. Some of this must be done at a particular time when the need appears, but much of it can be postponed until a slack season, as many employers have learned to their own and their employees' advantage. Some of the employers have found it possible to distribute the work among all the men when business is bad, giving some work to everybody rather than all the work to a few. The employer profits by this method himself in that a more stable labor force is maintained.

A concern that is notable for its achievements in the field of stabilizing employment is the Dennison Manufacturing Company of Framingham, Massachusetts. Through experience the Dennison Company has arrived at what it considers to be certain clearly defined principles in the matter of unemployment prevention. The company contends that "results so tangible have been secured that the means through which they have been achieved are no longer untested."

The principles include: (1) reduction of seasonal orders by getting customers to order at least a minimum amount well in advance of the season. The company has accomplished this "partly by persuasive salesmanship and partly by promising a greater security as to delivery." (2) Increase in the proportion of nonseasonal orders with a long delivery time. The orders received are those not to be delivered until a certain date or to be delivered when ready. (3) Planning of all stock items more than a year in advance. "Over a year in advance a detailed statement of just what stock items are wanted is placed with the Warehousing Department. The Warehousing Department works out a minimum monthly schedule based on the distribution of the last year's sales. Except that production must be kept up to this minimum, the producing department can distribute the work as seems best." (4) Planning of interdepartmental needs well in advance. (5) Building up of out-of-season items and varying the lines so as to balance one demand against the other. The company originally made boxes primarily for use during the holiday season, but later developed

paper-box items of a kind that would be used at other times during the year. The company admits that it would probably "be impossible to realize benefits as fully as the present time, if we were in a trade characterized by sharp style variations; but even under such conditions it is possible that some benefits could be received."<sup>85</sup>

The Eastman Kodak Company is another concern that has attacked this problem with vigor. A number of years ago steps were taken to accumulate stock during the slack season, and the plan has been steadily extended until it now covers practically all the products of the plant. The program involves four major steps. First, a sales forecast is made by the statistical department in cooperation with the sales department. The second step is to break down the annual forecast into estimates of monthly sales. The third step is to establish the most economical production level throughout the year, and the fourth is to determine the amount of stock to be carried at all times of the year. Favorable results from this program have been obtained. For example, during the eight years from 1922 through 1929, the number of employees laid off on account of slack work averaged only 2 per cent of the force. During this period the highest number of layoffs in any one year was less than 5 per cent of the force and the lowest 0.7 per cent.<sup>86</sup>

Other companies which have taken active steps toward the prevention of unemployment include the Proctor and Gamble Company, the American Radiator Company, the Joseph and Feiss Company of Cleveland, the Hickey-Freeman Company of Rochester, the Packard Motor Car Company, Leeds and Northrup, the Nunn-Bush Shoe Company, and the Geo. A. Hormel and Company. The plans of these various concerns must necessarily differ because the industries are so different, but most of them are concentrated upon the sort of unemployment that results from seasonal fluctuation.

Not only prevention but relief must necessarily be a part of any unemployment policy. In the very nature of the case much of the seasonal as well as the cyclical and the technological unemployment cannot be eliminated, and to that extent whatever is done must be done in the nature of relief. The depression of the thirties brought this phase of the problem to the fore. Relief took the form of unemployment benefits, loans to

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<sup>85</sup> For a critical examination of this and other plans to reduce seasonal unemployment, see Edwin S. Smith, *Reducing Seasonal Unemployment* (McGraw-Hill, 1931).

<sup>86</sup> William G. Stuber, "The Elimination of Seasonal Unemployment," *Unemployment, Industry Seeks a Solution* (U. S. Department of Commerce, 1931), p. 20.

unemployed workers, spreading work to avoid layoffs, and dismissal compensation.

Some companies have formulated their plans jointly with trade unions, whereas others have worked independently of the unions. Twenty-five company plans have been established, some of them covering more than one company or plant, and eighteen of these twenty-five are now in operation. Of the seven plans that have been abandoned five were discontinued during the depression of the thirties, among them that of the Dennison Manufacturing Company, which was the first to be established and dated back to 1916. About half of the existing plans have been started since 1929, and during the depression they had rather hard sledding. Benefits were quite generally reduced or the plans radically modified in the effort to maintain them.<sup>37</sup>

The company plans have been limited to manufacturing concerns and even in this restricted field the coverage has been too small to meet the problem of unemployment with any degree of effectiveness. According to a Bureau of Labor Statistics investigator, this experience, although limited, shows two things: (1) "that such plans organized on a fairly liberal scale as regards benefits, can be carried on, at least by many types of plants and industries, and even in times of considerable business fluctuations, without serious difficulty and without prohibitive expense;" and (2) "the importance and practicability of stabilized production and employment as an essential part of a successful unemployment-benefit plan."<sup>38</sup>

Recently there has been considerable agitation, particularly on the part of the C.I.O. unions, for plans for guaranteeing employment. These demands have led employers, economists, and trade union leaders to re-examine some earlier attempts to regularize earnings by means of guaranteeing annual wages. The only program which started before the depression of the thirties and is still in existence is that of Proctor and Gamble. In that company an employee must have had at least twelve consecutive months of employment with the company to be eligible. The company guarantees forty-eight standard-hour weeks of work less time lost by

<sup>37</sup> Anice L. Whitney, "Operation of Unemployment Benefit Plans in the United States," *Monthly Labor Review*, 38.1289 (June, 1934). The Dennison plan was suspended June 1, 1932, although there was a balance in the fund of approximately \$15,000. Although there has been a certain amount of unemployment in the company since that time, the committee has not regarded it as sufficient to warrant resuming operation of the fund. For a comprehensive and critical examination of company plans in operation prior to 1931, see Bryce M. Stewart, *Unemployment Benefits in the United States* (Industrial Relations Counselors, Inc., 1930).

<sup>38</sup> *Ibid.*, p. 1292.

reason of holiday closings, disability due to sickness or injury, voluntary absence, or fires, floods, strikes, or other emergencies. The right is reserved by the company to transfer any employee to work other than that at which he is regularly employed, and to compensate him in accordance with the rate which prevails for the work to which he has been transferred. The standard working week has been reduced several times until it is now forty hours, and in several of the plants the company has exercised its declared right to limit the hours of work in any department to 75 per cent of the established hours. In the main, however, the plan, now covering 3618 employees, withstood the depression satisfactorily.

Within the past few years a number of employers through collective bargaining have provided either plans such as Proctor and Gamble's for guaranteeing employment or plans for guaranteeing annual wages. Under the former plan a specified number of weeks' work is guaranteed without reference to the amount of the wages. The latter plan provides a guaranteed weekly income throughout the year regardless of fluctuations in employment. Actually, there is no great distinction, of course, between the two types of plans. In any event the worker can count on income for a specified time or for a specified amount during the year. According to a recent study by the Bureau of Labor Statistics, comparatively few workers are covered by such agreements, 42,500 in all with 30,000 of these being in service trades rather than in manufacturing. In addition to Proctor and Gamble, two other large manufacturing plants, the George A. Hormel and Co. and the Nunn-Bush Shoe Company, are now guaranteeing annual wages. A number of smaller plants, to be sure, have such plans in effect, but it cannot be said that the movement is developing rapidly.<sup>39</sup>

In a brief study, Professor Waldo E. Fisher of the University of Pennsylvania summarizes the present situation as follows: "We see then that the plans now in effect exist in a small number of companies; are found, as a general thing, in companies employing a relatively small number of workers; generally speaking, do not apply to all employees in the company; establish provisions which limit the company's financial obligations; and are limited, for the most part, to consumer goods, non-durable goods, and service industries."<sup>40</sup>

Interest in guaranteed employment has received added impetus with the realization of the possibility of postwar unemployment. The late

<sup>39</sup> Abraham Weiss, "Guaranteed Employment and Annual Wage Provisions in Union Agreements," *Monthly Labor Review*, vol. 60, No. 4, p. 707 (April, 1945).

<sup>40</sup> Waldo E. Fisher, "The Guaranteed Annual Wage," Industrial Relations Section, California Institute of Technology (Dec., 1945).



President Roosevelt requested an official study and both the C.I.O. and the A. F. of L. have expressed interest in some type of annual wages. Labor's arguments are summarized in a C.I.O. publication, "Guaranteed Wages the Year Around."<sup>41</sup> The real problem however, is not guaranteeing annual wages but stabilizing employment. Until that problem can be solved, very few firms operating in a competitive society will be able to guarantee employment.

Although spreading work has been advocated by many as a means of eliminating unemployment, it should be classed as a form of unemployment relief. If total wages remain the same, the total amount of employment has not been increased. Those who have obtained partial employment as a result of spreading the work have done so because others, either voluntarily or under compulsion, have given up part of their work. From the standpoint of the recipients' morale it is probably better to give them the work than to deduct from the wages of those who are employed and make them gifts. During the past depression the policy of spreading work was adopted by thousands of companies of all sizes and in widely different industries. According to one observer, "no type of emergency employment procedure has been more effective in preventing distress<sup>42</sup>;" and it undoubtedly was fairly effective during the early days of the depression.

In March, 1932, the President's Organization on Unemployment Relief made a survey for the purpose of obtaining information on the extent of spreading work and the methods used in doing it.<sup>43</sup> The survey covered 6551 companies, each having in 1929 a capitalization of \$100,000 or more. It was found that during the pay-roll period ending nearest March 15, 1932, employment had decreased 26.7 per cent from the 1929 figure and the pay-roll had declined 42 per cent. Of those employed on March 15, 1932, 56.1 per cent were on part time and these part-time workers were employed 58.7 per cent of full time. It was found that 25.5 per cent of the companies were working full time, while 28.1 per cent were working five or more days per week. Another interesting bit of information uncovered by the survey was that the proportion of part-time

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<sup>41</sup> Congress of Industrial Organizations, *Guaranteed Wages the Year Round*, Publication 124 (Aug., 1945).

<sup>42</sup> *Unemployment, Industry Seeks a Solution* (U. S. Department of Commerce, 1931), p. 28.

<sup>43</sup> William J. Barrett, "Extent and Methods of Spreading Work," *Monthly Labor Review*, 35:489-492 (Sept., 1932).

employees varied from 84.9 per cent in the machinery and rubber group to 20.4 per cent in the commercial establishments.

The most common method used was "reduced days per week." Fifty-nine per cent of the companies reported that they were using this method. The "reduced hours per day" was the next most popular method. Other methods used were "shorter shifts in continuous operation," "alternating shifts or individuals," and "rotation of days off."

The survey of the President's Organization on Unemployment Relief showed that a large proportion of our industrial establishments were utilizing the spreading of work for the maintenance of employment; but as the depression wore on and the amount of unemployment increased to unprecedented figures, the value of spreading work became negligible and the workers were forced to turn to the state for relief. As a method of relieving a relatively small amount of unemployment, spreading work has demonstrated its usefulness, but it is easy to forget that the workers who obtain employment in this way have done so at the expense of their fellow-workmen.

Thus we see that some employers have made real progress in their own plants in reducing unemployment and alleviating the distress by which it is accompanied. But the great industries of the country have scarcely been touched. As we have seen, most of the gain up to the present time has been made in the field of seasonal unemployment, which is the least serious variety. Much is said about the employer being responsible for unemployment and unquestionably he must bear some of the blame. Sometimes it is possible to stabilize his business, and we have noted that many employers have made serious attempts to do this.

It is generally recognized, however, that employers cannot by themselves handle the problem of unemployment even if they were so inclined. The methods that have so far been used by employers to stabilize business apply much better to some types of good than to others. It is obvious that standardized goods and semistandardized goods lend themselves much more readily to such a program than do goods which are individualistic in their appeal and goods which are subject to style changes. Now it might be said, and with a great deal of truth, that much of the demand for new styles and new models is the result of active campaigning by the manufacturers themselves. Advertising has played no small part in developing markets for the "latest" in all kinds of goods. Hence, if

the manufacturers would be more reasonable in their appeals to the fickle buying public, there would be a greater chance for standardization.

But is it fair to expect them to do this? Hardly, with industry organized on a competitive basis. The manufacturer must sell his goods, and he must sell them at the expense of other manufacturers; and in order to do this he must make some kind of appeal—better quality, lower price, or the newest and latest thing in that line. Not only do the men's clothing manufacturers, for example compete against each other but they compete against the producers of other goods, a kind of competition which oftentimes becomes as fierce as any. What is the true significance of the stand taken by a national organization of clothing manufacturers in 1930? Men's clothing, the organization declared, were too standardized, men should be made to feel out-of-date if they wore the same suit for very long. And the only way to make them feel out-of-date is to change the style of men's clothes radically and frequently.

It is not only the competitive system that tends to cause producers to move away from standardized goods, but also the capriciousness of the buying public. Professor Paul Douglas reports an incident that illustrates this very well: "As long as the competition between women in the matter of dress continues, we may, therefore expect a disorganized industry. This competition gives no indication of slackening, as was amusingly witnessed several years ago when, in order to enable a factory to continue producing during the slack season, several hundred public-spirited Cleveland women pledged themselves to buy standardized suits. When the time for delivery came, however, the public spirit of these ladies was not sufficient to withstand their desire to maintain a competitive superiority in the struggle for man's favor, and only a small percentage of the suits ordered were finally purchased. So will it be, I fear, for a long time to come. The moving picture has moreover removed the happy hunting grounds for outmoded styles which formerly existed west of the Mississippi." <sup>44</sup>

There are also industries whose seasonal character it seems impossible to eradicate, for example, the building industry. While there is much more building done in the winter months now than formerly, it seems unreasonable to expect that the time will ever come in this country when as much building will be done in the winter as in the summer. Other industries partake of the same character to such an extent that complete, or anything like complete, stabilization is unlikely.

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<sup>44</sup> Paul H. Douglas, "Can Management Prevent Unemployment?" *American Labor Legislation Review*, 20:277 (Sept., 1930).

Stabilization of seasonal industries has, therefore, very definite limitations. This is even more true of technological unemployment and cyclical unemployment. Management has done practically nothing toward eliminating the latter types, and it is impossible for management alone to do much to eliminate them. We ask for efficiency in management to lessen seasonal unemployment; but the irony of the situation is that efficient management, while reducing seasonal unemployment, may create other unemployment. Inasmuch as this point has been discussed at some length in another connection,<sup>45</sup> however, it need only be mentioned here.

The employers could better the situation somewhat by maintaining a system of transfers and placement bureaus. But the fact is that the main problem remains untouched, and must continue to remain so, as long as reliance is placed solely in the employer's efforts. The recent depression not only brought home to us the seriousness of unemployment, but it also emphasized the almost complete helplessness of the individual enterprise in the face of a major depression. Under such conditions it has no choice but to curtail its production and that means unemployment. Is the individual employer to any extent responsible for the depression? Can he, along with other producers, prevent a recurrence of the catastrophe by taking proper measures? We cannot say because we do not know enough about the business cycle to determine the causes of the depression and allocate the responsibility. Until that ignorance has been dispelled by new knowledge, the individual employer can do little but sit at his desk and sadly shake his head over the incomprehensible ways of a kindly Providence.

The employer may make some material contribution to the relief of unemployment by maintaining insurance and reserve funds to supplement the unemployment compensation provided under the provisions of the Social Security Law. Some students of the problem maintain that experience rating, which reduces the employer's tax if he regularizes employment may bring some relief, particularly in seasonal unemployment, but even with this financial incentive the individual employer can do very little either to cure or alleviate the results of mass unemployment.

To some extent the responsibility of the individual employer to plan for ameliorating the condition of unemployed workers has been lessened by the passage of state unemployment compensation laws. Nevertheless, there are many concerns that arrange to pay dismissal compensation when the worker is laid off.

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<sup>45</sup> See Chapter I.

Dismissal compensation has been defined as "the payment of a specified sum, in addition to any back wages or salary, made by an employer to an employee for permanently terminating the employment relationship primarily for reasons beyond the control of the employee."<sup>46</sup> This form of payment is somewhat similar to unemployment benefits but there is a real difference. The latter are used to indemnify workers who are *temporarily* laid off and who will presumably be re-employed as soon as business conditions warrant. Dismissal compensation is for employees who are laid off *permanently*.

The plan seems to be based to some extent upon a presumption of permanency of employment. It is undoubtedly true that "the man who works for one employer for ten or fifteen years, even if he does not actually obtain a vested right to his job, at least builds up a presumption that he will finish his active service in the same company. To break off the connection becomes a serious step not to be taken hastily by either party."<sup>47</sup> Undoubtedly also there is in the minds of many employers a desire to reward faithful service as well as to relieve distress. Also dismissal compensation has no doubt been introduced in many instances as part of a general plan to maintain the morale of the employees. Continuing employees, seeing their fellows cut down without any compensation, become extremely critical of the company and fearful of the time when their turn will come. It is a common criticism that companies are prone to discharge employees just because they become eligible for pensions. Such criticisms may not be justified, but the awarding of some compensation at the time of dismissal will do much to allay them. There are also other expectancies such as group insurance, sickness and accident benefits, and vacation privileges, which are swept away by dismissal and which can be made up in part by dismissal compensation.

Whatever the motives underlying them, there is no doubt that dismissal plans have been making relatively rapid headway. Before the depression of the thirties the plans in operation were relatively few. More than half the plans now in use have been formulated since 1930. Up to 1940, there were 329 companies reported as having paid dismissal compensation at some time. Most of the companies have not announced how many employees have been compensated nor the total amount paid but

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<sup>46</sup> Everett D. Hawkins, *Dismissal Compensation* (Princeton University Press, 1940), p. 5.

<sup>47</sup> Edward S. Cowdrick, "Dulling the Axe of Dismissal," *Nation's Business*, October, 1930, p. 47.

reports from thirty-two of the firms state that more than 72,769 men have been compensated with a total expenditure of \$10,809,398.80.<sup>48</sup>

It might be of interest to note some of them in features of the plans.<sup>49</sup> Dismissal compensation has been limited almost altogether to large companies. Two-thirds of the companies paying dismissal compensation have more than one thousand workers. Not all of these workers are covered by the plans as in practically all of the formal plans there is a service requirement. In the long-service group (10 to 20 years) are found about one-third of the plans for wage earners and a much smaller per cent covering salaried workers. There are only a few plans for wage earners that have as short a service requirement as one year. For thirty-two companies that have given information concerning the amount of compensation paid, the average payment to the 72,769 workers receiving compensation was \$148.54.

Very few of the companies have worked out a formal program for financing the plans. Most of them operate on a pay-as-you-go basis. Some have savings or profit-sharing funds which also serve for dismissal payment, but these are definitely in the minority. A highly controversial question concerns the method of payment: should it be made periodically or in a lump sum? It is argued by some that the payments should be spread out so that they will help carry the worker through the period between jobs, while others contend that the man should realize that his job is over and should not be encouraged to stay around the plant, as he tends to do when he is required to come there periodically for payments. About 30 per cent of the companies use the lump-sum method, whereas about 23 per cent use the periodic method. The remainder use various combinations of the two.<sup>50</sup> Dismissal compensation had a relatively good record during the depression of the thirties. As has already been pointed out, there has been a great increase in the number of plans during this period, and also a number of informal plans have been converted into formal ones. Most of the newer plans have shorter service requirements. All the plans adopted since the beginning of the depression, and a number of others have raised their scales of compensation. The very fact that most of the plans were formulated during the depression may explain their relatively good record. The danger of companies assuming a heavier

<sup>48</sup> Everett D. Hawkins, *Dismissal Compensation* (Princeton University Press, 1940), p. 39.

<sup>49</sup> For a detailed study of dismissal compensation, see Everett D. Hawkins, *Dismissal Compensation* (Princeton University Press, 1940).

<sup>50</sup> *Ibid.*, p. 97.

load than they could handle was not so great as during the booming days of the twenties and more care was undoubtedly exercised in formulating the plans. The large size of the corporations paying compensation has also been a contributing factor.

It is difficult to attempt an evaluation of the place in industrial relations as a whole of any policy that has developed as recently as has dismissal compensation. As time goes on, dismissal compensation may develop many of the weaknesses and much of the strength of older industrial relations policies. On the other hand the circumstance of its having grown up largely during a depression may enable it to avoid some of the pitfalls, for example, that have brought employee stock ownership to grief. The more careful formulation necessitated by the depression will lessen the danger of collapse through lack of funds. As Professor Hawkins has pointed out, dismissal compensation has commended itself to company officials, trade unionists, and legislators alike.<sup>51</sup> The plans are simple and thus easily administered, and every incentive is given to the worker to look for another job immediately. Dismissal compensation, however, is not a substitute for unemployment compensation. Plans are designed to cover chiefly unemployment caused by mergers and the introduction of labor-saving machinery. Thus far, dismissal compensation has been used largely by large firms employing many white-collar workers. Most of these firms deal directly with the public, their wage payments form a relatively small part of total cost, and they do business in what may be considered noncompetitive markets. These are the present limitations, but whether dismissal compensation will develop into a permanent part of the employer's industrial relations program must remain an unanswered question for the time being.

That it has real possibilities few will doubt. Although instituted primarily as a means of preventing hardships, it may also serve to stand in the way of those unduly rapid shifts in technique of production that lead to great spurts of unemployment. It has been suggested that if the cost of the compensation is assigned directly to the department making the dismissal, "encouragement is given to transfers and retraining, the gradual absorption of excessive employees through normal turnover, or the elimination of additions to the pay roll when layoffs may be foreseen. In the long run this is probably the most important effect of such compensation, although it is limited, of course, by the relation of the cost of compensation

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<sup>51</sup> The Bureau of Labor Statistics reports that 450 dismissal-pay plans covering about 135,000 workers were found in 9500 current union agreements. *Monthly Labor Review*, vol. 60, No. 1, p. 47, "Dismissal-Pay Provisions in Union Agreements" (Dec., 1944).

to the savings made.”<sup>52</sup> If the cost is not definitely assigned to the department causing the displacement, dismissal compensation might even make it easier for supervisors to lay men off. Also, if it is to be a really effective brake, not only will payments have to be much larger than they are at present, but the system will have to be much more widespread. Regardless, however, of what its permanent contribution may be, it cannot be denied that dismissal compensation has made a real contribution, although a small one, toward reducing the distress caused by the recent depression.

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<sup>52</sup> Industrial Relations Section of Princeton University, *Dismissal Compensation* (1932), pp. 10-11.



## CHAPTER XIV

### MEETING THE WAGE-EARNER'S GRIEVANCES (Concluded)

#### PROFIT SHARING

Employers' motives for the installation of profit-sharing plans are mixed. No doubt some plans have been started in an attempt to better the economic conditions of the workers. Other schemes have been used in an attempt to build up the good will of the workers. Many of the schemes, however, are the employers' attempt to make the employees feel that they are really sharers in the enterprise and thus to awaken in them a more vital interest in its welfare. A recent study of profit sharing indicates four reasons given by plants for adopting plans. Of ninety-four plans, thirty-six were adopted to provide for retirement benefits. Thirty-one were to stimulate greater effort or interest; twenty were to reward exceptional service; and seven were to encourage employee savings.<sup>1</sup>

Although the term has been loosely used to cover many methods of payment, profit sharing should be clearly differentiated from the premium and bonus systems. Strictly speaking, these depend upon the efforts of the workman or the group of workmen concerned; whereas profit sharing is understood to be payments in the form of cash, stock, options, warrants, or otherwise, given under a predetermined and continuing policy by the management of a company to all or any group of its officers or employees in addition to the established wages or salaries.<sup>2</sup> "The essential feature of profit sharing," says another author, "is that the employee's earnings are not definitely fixed, and that the basis upon which they vary is net profits,—as distinguished from output, total sales, or any other factor."<sup>3</sup>

There are several forms of profit sharing. Ordinarily cash payment is made at the end of a specified period, usually the fiscal year. Or instead of a cash payment, the sum may be placed to the employee's credit in the form of deferred savings or insurance. Sometimes these accounts may be drawn

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<sup>1</sup> Bryce M. Stewart and Walter J. Couper, *Profit Sharing and Stock Ownership for Wage Earners and Executives* (Industrial Relations Counselors, 1945), p. 23.

<sup>2</sup> *Ibid.*, p. 1.

<sup>3</sup> A. W. Burritt and Others, *Profit Sharing* (Harpers, 1918), pp. 4-5.

against, but if so, the drawing is very definitely limited by restrictions concerning age or length of service with the company. Another popular form of profit sharing consists in giving shares of stock to the employee instead of cash or credit.

The apostles of profit sharing, those men who have looked to profit sharing for a substantial contribution to industrial peace, see something fundamental at stake. They perceive the essential weakness of the wages system. They realize that under this system the worker fails to do his best or anything like his best. It is universally conceded that laborers do not do nearly as much work as they easily could. This is clearly demonstrated by the fact that immediately upon the introduction of some method of remuneration involving an incentive, such as piece-rate, premium, or bonus systems, production increases greatly. This is not because the average worker is lazy. The laggard at his job may work diligently in his own home after hours. The reason lies deeply imbedded in the wages system itself. Under this system a man does not work primarily in order to produce the particular article which he is engaged in making. He works primarily for wages, and wages are foremost in his mind. Why should he be interested in the product of his labor when it goes to the employer and not to him? You can tell him that in the long run he will suffer by being slow, that his inefficiency will raise the cost of production and thereby the cost of living, but your reasoning will fall on deaf ears. The possibility of sharing in an increased social dividend leaves his imagination cold and his conduct unaltered. What he wants is to get as much in wages as he can.

The effect of the wages system is not only to make the worker somewhat perfunctory in the performance of his tasks, but also to bring him into conflict with his employer. The employer wants him to produce more goods and he wants the employer to pay him more wages. The ingenuity and energy which otherwise would go into his work are poured into the devising and putting into effect of ways and means of getting a larger income. This weakness is so vital that in the eyes of many students the wages system stands condemned on this one charge alone. They hold that under this system the interests of the two groups are, and necessarily must be, opposed, and that this essential antagonism of interests inevitably produces friction and conflict. "The disputes which matter," says Mr. R. H. Tawney, "are not caused by a misunderstanding of identity of interests, but by a better understanding of diversity of interests."

It is this great weakness of the wages system at which profit sharing in its fundamental aspects is supposed to strike. The idea is that the employee will share in the profits and will consequently be directly interested

in increasing them. The employer, of course, is already so interested; and so the interests of the two will draw together and converge. Profits will no longer be a faraway social dividend to be distributed at some indefinite future time to the entire population of an enormous country, but something very tangible to be distributed to the workers in each particular establishment at the end of each fiscal year. The workers, it is expected, will discern the close connection obtaining between the way they work and the profits they will receive at the close of the year; and also they will realize that they and the employer are largely working toward a common goal, and this should help greatly to keep them from rubbing each other the wrong way. Some such outcome as this is what the true devotee of profit sharing has in mind, and profit sharing as a social experiment must be weighed in the balances of this larger purpose.

In the instituting of a profit-sharing plan there are certain fundamental principles that students of the movement regard as essential to success. The first of these is that full market wages shall be paid. Of course it is difficult in some instances to determine just what the full market wages are, but when at all possible the wages must be kept as high as those normally paid in the industry. The object of the plan is to elicit the greatest degree of cooperation on the part of the employee, and obviously this cannot be done when the profits to be obtained will only serve to bring the wages up to what they would have been had no such plan been introduced. That is, the profits must be "gravy." Otherwise discontent and resentment are apt to be aggravated rather than appeased by a scheme which in the eyes of the workmen seems just another trick being played on them by the employer. Some employers have deliberately used profit-sharing schemes for the purpose of whittling down wages. One employer wrote, "On January first of each year our profits are distributed, and wages adjusted. On that day we consider the wages of employees. Any who insist on securing an advance in salary are dropped from the profit sharing list." Another reported, "It has succeeded in keeping the salaries the same as they were when the plan was introduced several years ago in spite of the fact that the general scale of salaries, the prices of commodities, and everything else has gone us."<sup>4</sup> If that principle is adopted, the employees are bound to find it out in course of time and the results will certainly be anything but gratifying.

Another point that must be kept in mind is that if profit sharing is to have any appreciable effect upon the workers, the payments must be substantial. If the company is niggardly, the results will be niggardly too.

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<sup>4</sup> *Ibid.*, pp. 9-10.

In fact, they may be worse than no results at all. When a profit-sharing plan is introduced with a good deal of ballyhoo, the employees naturally expect a substantial increase in their incomes; and their disappointment can easily turn to resentment if the payments are so small that the gain is hardly noticeable.

Perhaps the most important requisite of all is that the plan should be free from any odor of philanthropy or charity; for unless it is placed upon a purely business basis, the employees will think they are getting something for nothing and will assume no corresponding responsibilities. This implies, first of all, that the provisions of the plan must be definite and clearly understood in advance and that grants to the employees must be automatic upon the fulfillment of certain specified conditions. This is not always the rule. Many concerns are using plans which they call profit sharing, giving to the employees a sum at the end of the year whose size depends on the employer's discretion. For example, one plan reads in part, "Out of the net profits of the business for said fiscal year, beginning February first . . . remaining after deducting all costs and expense incident to said business, including payment of wages as shown by said payroll, there shall be set aside such sum as the Board of Directors may determine to be a fair return upon capital invested, and that out of the balance remaining, one-half thereof shall be distributed among such employees as may be deemed worthy by the Board of Directors."<sup>5</sup>

The disadvantages of such a scheme are obvious. To begin with it is too much like dear old Santa rewarding the good little boys and girls. The men become suspicious. Whether justly or not, they are prone to believe that profits are shared only with those employees who have been loyal to the company—loyalty meaning unfriendliness to any union movement and a general acceptance without protest of all that the employer sees fit to say and do. In other words the indeterminate payment system is regarded as a weapon to fight trade unionism and all other manifestations of discontent. A group of students who have made a careful study of profit sharing conclude that "such plans are of questionable value viewed as instruments either for the promotion of efficiency or of social welfare. The arbitrary decision of the management, made after and not before the extra exertion, robs the plans of a large part of their stimulating power. It is not to be expected that men will concern themselves to increase profits and keep down costs, when they have no knowledge as to what portion of the profits, if any, they will receive. From the standpoint of social betterment such arbitrary distributions are also to be condemned. . . . A widespread use of profit

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<sup>5</sup> *Ibid.*, p. 14.

sharing of this character would inevitably work undesirable results among members of the employed class, by making them more dependent upon the bounty and charity of employers than on their own initiative and bargaining power.”<sup>6</sup> Recent studies seem to show that management has learned these difficulties of indefiniteness. Most of the plans examined by Professor Balderston in his report for the Industrial Relations Counselors provide definite payments after definite requirements have been met.<sup>7</sup>

Among the important questions which employers have to face when they decide to introduce profit sharing is the problem of how much of the profits shall be distributed among the employees. There are two customary bases for answering this question. The largest proportion of the plans which are designed for all employees rather than only for executives provide for a predetermined basis, usually in terms of a specified percentage of the profits after indicated deductions have been made. Where such a plan is used the company must use sound accounting methods and the employees must be thoroughly convinced of their soundness if suspicion is to be avoided. Less popular as a method for determining the amount to be distributed is to allow management to make an arbitrary decision each year. The disadvantages of such a plan are obvious, especially if all employees are to share in the divided profits.

Equally important is the question as to how the total amount of profits allocated to the employees is to be distributed among the individual men. Some companies have used as their criterion “the efficiency, loyalty, and the growth or improvement which participants have shown during the year.” This method is insisted upon by some employers because it place a premium upon efficiency, which after all is their chief object in introducing the plan. The difficulty lies in measuring such intangibles as efficiency and loyalty with any degree of accuracy. It is a difficulty which lays the method open to grave abuses; and whether the abuses actually occur or not, the employees will be suspicious as long as they *can* occur. Some employers classify their employees into groups, usually according to the importance of their responsibilities, or according to the length of service, and then assign to each group an appropriate portion of the total amount to be distributed. One common method is to make the apportionment on an individual basis according to wages or salary received. Sometimes the distribution is equal, regardless of the wage received. Another customary method is to make

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<sup>6</sup> *Ibid.*

<sup>7</sup> Canby Balderston, *Profit Sharing for Wage Earners* (Industrial Relations Counselors, 1937).

an individual's share in the fund contingent upon that worker's savings, usually in the form of contribution to a retirement fund.

A question which has recently confronted the employer is whether to make the distribution in cash each year or whether to retain each worker's share in a pooled fund payable at some future date. The former type has been called "non-trusted"; the latter, "trusted." In recent years profits sharing has encountered many difficulties including the enforced disclosure of high executive salaries, high taxation on corporate earnings, and, during World War II, the restrictions arising under the government's wage and salary stabilization plans. These factors have accounted in part for the noticeable trend in recent years to trustee profit-sharing plans by means of which corporate taxes are reduced, charges of discrimination in favor of executives are avoided, and plans could be approved under wage stabilization policies.<sup>8</sup>

A most vital question confronting the employer who is introducing a profit-sharing plan is how best to make the employees acquainted with it. For unless the potential beneficiaries become thoroughly familiar with the plan and unless proper provision is made for keeping them in touch with its actual operation as time goes on, they are quite apt to mistrust the whole business. Their suspicions may be absolutely ungrounded, but that fact will not help matters unless they have some means of knowing that everything is fair and square. The only means by which they can be assured of this is through a complete understanding of the plan, of its provisions, and of the way they operate. This means above all that the plan must be as simple as possible. The average employee knows too little of finance to be able to comprehend any complex arrangement. Then there must be a thorough understanding between the employees and the company concerning the terms of the plan *before* it is put into effect. Misunderstandings arising after it is in operation are all too apt to wreck the whole project. Full, frank, and honest consideration of all possible questions prior to the installation of the plan is a precaution which will go far toward eliminating chances for friction.

It should be obvious that no single plan would satisfactorily meet the needs of all employers. Conditions vary so much from industry to industry that what would work out well in one concern might fail entirely in another. This statement applies to the type of plan to be introduced, to

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<sup>8</sup> Bryce M. Stewart and Walter J. Couper, *Profit Sharing and Stock Ownership for Wage Earners and Executives* (Industrial Relations Counselors, 1945), p. 10.

the method of introducing it, to the method of operating it, in fact, to the whole affair. But the few general principles just laid down are held by students of profit sharing to be basic to the successful functioning of any plan.

Profit sharing is not new as industrial plans go. The modern movement really began in the Leclaire establishment in Paris in 1842, although we know of methods suggestive of profit sharing which were in operation even earlier. Edmé Leclaire was the head of a house-painting firm, and he introduced a plan of cash disbursements restricted to a nucleus of the higher-paid workers. He firmly believed that if the workers were given an opportunity to share in the profits of the firm, their efficiency would increase to such an extent that both they and he would receive a larger income. And he was very successful. Several years later a similar plan was introduced into the Godin establishment. Godin was a follower of Fourier and regarded profit sharing as a means of promoting a broad program of producers' cooperation. The successful operation of these two plans attracted a great deal of attention. A society for the study of profit sharing was founded in 1878 and a great deal of writing and speaking espousing the cause were forthcoming. Despite the great amount of propaganda, the development of profit sharing in France was distinctly limited. In 1889 there were only 120 profit-sharing plans in the country and by 1924 the number had dwindled to seventy-five, one-third of these having been started after 1919.<sup>9</sup>

Profit sharing developed to some extent in every other European country but has made no real headway anywhere despite a few examples of what appears to be genuine success. In Europe profit sharing was, to a very large extent, a part of the movement for social reform, while in the United States it is the result almost entirely of employer initiative. Although some plans were started in the seventies, profit sharing did not acquire any significance in this country until the eighties. A survey indicated that by 1896 altogether fifty plans had been introduced. Thirty-three of these had been abandoned permanently and five had been indefinitely discontinued, leaving twelve systems then in operation.<sup>10</sup>

There was no further exhaustive survey until the United States Department of Labor made an investigation in 1916.<sup>11</sup> Mr. Boris Emmet, who conducted this survey, found but sixty companies operating profit-sharing

<sup>9</sup> Lyle W. Cooper, "Profit Sharing," *Encyclopedia of the Social Sciences* (Macmillan, 1934), vol 12, p 488.

<sup>10</sup> National Industrial Conference Board, *Practical Experience with Profit Sharing in Industrial Establishments*, p. 10 (1920).

<sup>11</sup> U. S. Bureau of Labor Statistics, *Bulletin No. 208* (1916).

plans in that year, and more than two-thirds of those had been in operation less than ten years. Available records show that by 1920 forty-nine establishments of every kind had attempted profit sharing but later abandoned it. A number of other companies mentioned in surveys of profit sharing before 1900 do not appear on later lists and so seem to have dropped their plans.<sup>12</sup>

The First World War gave some impetus to profit sharing, but there was little if any advance after 1916. In 1927 a survey indicated that of 4409 establishments employing 419,000 workers, only fifty-four or 1 per cent had some form of profit sharing, and in these the average yearly "bonus" was \$85; 109 enterprises had managerial profit sharing, with an average yearly bonus of \$712.<sup>13</sup> The past depression practically eliminated such profit sharing as was left in 1929 among the rank and file, but a recent study shows some increase since 1935. The 1940 survey indicated that of 2700 companies, 158 or 6 per cent had profit-sharing plans for all employees; 229 or 8 per cent had plans for key employees, and 248 or 9 per cent provided for executive profit sharing.<sup>14</sup>

During the Second World War, when wages were stabilized and employers were developing various other methods of attracting and holding their employees, numerous bonus and profit-sharing plans were submitted to the National War Labor Board for approval. The Board's policy was to deny requests for such plans unless the company had formerly had a comparable one. The amounts of the bonuses given could not be increased over the amounts which the company was paying its employees as of October 2, 1942, the date of the stabilization order. The "trusteed" type of plan, however, could be approved provided it contained certain safeguards to prevent discrimination in favor of the higher-paid employees and restrictions upon payments out of the fund to keep the profit-sharing plan from being a factor in upsetting wage and salary stabilization. With the end of hostilities, the restrictions were somewhat lightened, but the Bureau of Internal Revenue still maintains a deep interest in all profit-sharing plans lest they be used for tax avoidance.

The proportion of business done under profit sharing has never been very large, and despite its signal success in certain establishments where profits are both large and regular, the movement cannot be said to have made particularly rapid strides. There must be some deep-seated reason

<sup>12</sup> National Industrial Conference Board, *Practical Experience with Profit Sharing in Industrial Establishments*, p. 10 (1920).

<sup>13</sup> Lyle W. Cooper, "Profit Sharing," *Encyclopedia of the Social Sciences* (Macmillan, 1934), vol. 12, p. 490.

<sup>14</sup> National Industrial Conference Board, *Personnel Activities in American Business*, p. 9 (1940).



for this failure to make real inroads into the industrial and mercantile establishments of the country, for on the face of it profit sharing is a very attractive scheme. True, it has had to face a number of obstacles, some of them rather difficult to surmount. Like all plans devised by the employer to make his workmen more contented, it has suffered exploitation at the hands of unscrupulous and nearsighted employers who have wished to reap the benefits without giving up any of the profits. Many are the schemes in the guise of profit sharing under which the employees have been tricked. Once he has been victimized by a profit-sharing plan an employee is naturally inclined to condemn the whole movement.

A second serious difficulty lies the employees' ignorance of the particular business and of bookkeeping and accounting in general. They have no way of knowing whether the company is making profits or not, or at least they think they have not, which amounts to the same thing. The only remedy for this is to give them access to the books, allowing them to employ an accountant of their own. To the employer this may seem worse than the disease it is designed to cure. He does not like to throw his books open to anyone, for he knows that in doing so he may suffer serious harm. He does not want it generally known whether he is or is not making big profits—the one piece of information being calculated to invite competition, the other to have an adverse effect upon his credit.

A third obstacle that profit sharing has had to face in America is the opposition of organized labor, which, rightly or wrongly, has regarded it as just one more shaft in the employer's anti-union quiver. Organized labor's attitude is well represented by an editorial in the *Federationist*, which reads in part as follows: "In looking over notes and clippings concerning the motives and opinions of the new profit sharers, or proposed profit sharers, the expressions of altruism and philanthropy seem to be 'lugged' into the discussion while the language of calculating business comes to the front frequently and forcibly. . . . This language has a purely businesslike sound. But wherein it indicates an increased happiness for the masses of labor is not convincing."<sup>15</sup> It is further claimed that profit sharing is used as a means of speeding up and that it is accompanied by a greater amount of supervision, the great aim being to get as much as possible out of the workmen in return for the profits they receive.

More recently, President Green has expressed labor's willingness to cooperate in profit-sharing schemes if the cooperation is done through the medium of collective bargaining. Furthermore, the National Industrial

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<sup>15</sup> A. S. Burritt and Others, *Profit Sharing* (Harpers, 1918), pp. 4-5.

Conference Board reports that in some few instances plans were introduced with the aid of the union. The recent study of the Industrial Relations Counselors, however, confirms the statements made in earlier studies that unions in general hold "that any profits a business can afford to distribute to its employees should be included in their basic wage rates."<sup>16</sup>

These are real obstacles, no doubt, but obstacles which could certainly be overcome or circumvented in one way or another were they all that stood in the way of success. Is there not a more fundamental difficulty? A careful scrutiny of profit sharing itself and of the experiences of the various companies which have undertaken it would seem to disclose a weakness more serious than any yet mentioned. The true apostles of profit sharing hoped that it would penetrate to what seems to be the essential weakness of the wages system itself; hoped, indeed, that it would remove the real bone of industrial contention. President Eliot of Harvard, a strong advocate of profit sharing, declared, "So far as I can see, the only way [to bring industrial peace] is to present to the operatives or workmen exactly the same motive which energizes the owner or capitalist, namely, the expectation of an increasing revenue as a consequence of zeal, industry, and the avoidance of waste."<sup>17</sup> The workers, it was thought, would see that as profit sharers they, along with the employer, had a vital interest in the immediate profits of the concern, and would work hand in hand with him to increase those profits. It is at this crucial point that profit sharing seems to have broken down. In the average industrial enterprise of today there is a very flimsy and uncertain connection between the individual employee's efforts and the good or bad fortunes of the business. The connection is present, but there are too many other factors crowded into the situation to leave it more than standing room. Compared with the responsibility of the management and with the effect of general market conditions the contribution of the individual employee is very, very small; and he knows it. He has discovered by experience that the amount of the profits he receives bears no direct relation to his own diligence, and he has learned to regard the yearly payments as a matter of luck, as a gift from the gods, rather than as a payment for service rendered. In most cases the payments have been too small as well as too uncertain to make much of an impression upon the employee. Over a long period of years in Great Britain the "labor dividend" declared by profit-sharing firms averaged approxi-

<sup>16</sup> Bryce M. Stewart and Walter J. Couper, *Profit Sharing and Stock Ownership for Wage Earners and Executives* (Industrial Relations Counselors, 1945), pp. 47-48.

<sup>17</sup> Henry James, *Charles W. Eliot* (Houghton Mifflin, 1930), vol. 2, p. 233.

mately 5 per cent on annual earnings of the workers. The operation of a majority of the plans in the United States has resulted in less than a 10 per cent increase in the participating wage-earner's income.<sup>18</sup> In his survey of profit-sharing plans for the Bureau of Labor Statistics, Mr. Emmet found only three employers who stated definitely that profit sharing had resulted in increasing the efficiency of the participating employees. All of these had paid unusually high profit-sharing dividends in the past, ranging from 16 to 100 per cent of the annual earnings of the participants.<sup>19</sup> As a method of presenting "to the operatives or workmen exactly the same motive which energizes the owner or capitalist, namely the expectation of an increasing revenue as a consequence of zeal, industry, and the avoidance of waste" with resulting increase in efficiency and elimination of industrial friction in a fundamental way, profit sharing must be regarded as quite inadequate. In fact, in their conclusions, Messrs. Stewart and Couper state: "Despite contrary statements of a minority of managements with profit-sharing experience, the preponderance of evidence is that profit sharing has made no substantial contribution to the improvement of employer-employee relations."

Nevertheless when used wisely and fairly under proper conditions, and with due regard for its limitations, profit sharing may continue as in the past to make a modest contribution toward efficiency and toward industrial peace. Particular employers here and there have demonstrated to themselves and to the public that while it cannot live up to the glowing predictions of some of its sponsors, it can be made to yield some benefits.

#### EMPLOYEE REPRESENTATION

Among the movements instituted by the employers in an effort to improve their industrial relations, employee representation or company unionism may probably be regarded as the most significant. Until recently it had assumed larger proportions than any other, had gained the support of a larger number of employers, and was probably looked to by a larger number of people as offering the greatest hope of a satisfactory solution to the labor problem. Organized labor reinforced that impression by reserving its biggest guns for the scheme, giving every indication of regarding it as one of the gravest menaces to trade unionism that had yet appeared on the industrial horizon.

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<sup>18</sup> Lyle W. Cooper, "Profit Sharing," *Encyclopedia of the Social Sciences* (Macmillan, 1934), vol. 12, p. 490.

<sup>19</sup> U. S. Bureau of Labor Statistics, *Bulletin No. 208*, p. 171 (1916).

The validation by the Supreme Court of the National Labor Relations Act, however, has for the present, brought an end to the earlier type of employee representation plan. The law does not recognize as an agency for collective bargaining any organization receiving financial or other support from the employer. Furthermore, Section 8 of the law declares that it is an unfair labor practice "to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it." Since most employee-representation plans were company sponsored, this section of the law has effectively ended their continuance in their earlier form. To be sure, some of the organizations have continued as labor organizations without, at least, visible support. Other plans have been converted into benefit associations rather than true employee-representation plans. Because of their historic interest, however, and because of the possibility of their return to prominence if the Labor Act is emasculated, it seems proper to devote some space to the various plans.

It is somewhat difficult to classify employee representation plans because there is no general agreement as to what employee representation is. The terms "works councils," "shop committees," "industrial democracy," "company union," and "employee representation" are often used interchangeably, but sometimes they are given distinctive meanings. It is necessary therefore to make a definite statement as to how the term will be used in this discussion. Inasmuch as a great deal of statistical material will be drawn from the reports of the National Industrial Conference Board, it seems best to accept the Board's quite satisfactory definition. The Board states that "employee representation may be defined as a mechanism to permit employees of an organization, through duly elected representatives from among their number, to confer with management representatives concerning matters affecting working conditions, with a view to arriving at a mutually satisfactory agreement and, in general, promoting harmonious relations and an understanding on the part of each group of the viewpoint and the problems of the other."<sup>20</sup>

Of the most recent plans there seem to have been two important types. One, based on the idea that employees and employers can work out their problems to better advantage by means of cooperative action, called for equal representation and equal voting power on the council. This is known as the joint-representation plan. The other, the employee-committee type, was based on the assumption that employees should be given greater freedom of action in working out their problems for presentation to the employer.

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<sup>20</sup> National Industrial Conference Board, *Collective Bargaining through Employee Representation*, p. 2 (1933).

Another type might be mentioned, although it is somewhat similar to the employee-committee type and is sometimes so classed. An organization similar to a trade union, with provision for local and a governing body of employee representatives, is formed. It differs from the trade union chiefly in that membership is confined to employees of a particular company, and it differs from the employee-committee type in that it usually requires that employees become members of the company association in order to come under the jurisdiction of the plan.

Perhaps another type should be mentioned—"industrial democracy"—not so much because of its lasting importance as because it was much in the limelight for a time. This plan, of which John Leitch was "father,"<sup>21</sup> provided for house, senate, and cabinet, because industrial democracy was to bring economic advantages to the worker just as political democracy had brought him political blessings. Although the plan is supposed to be patterned after the government of the United States there is one significant difference. The house is elected by the workers but the senate and the cabinet are appointed by the management. Mr. Leitch himself is the "industrial evangelist" type, winning the workers of the Packard Piano Company, for example, with the slogan: "If there is no harmony in the factory, there will be none in the piano." For a time he seemed to be performing miracles, or so one gathers from reading his book. There were ten of these plans in operation in 1919 and forty-three in 1922. But their popularity soon waned and the number dwindled until by 1935 there were only seven companies known to be using it. Their main weakness as compared with other plans is that they are too elaborate and cumbersome.

The most common type of plan in industry was the joint-representation plan. The essential feature of this type is that the two groups have equal voting power on the central council whether or not there is equal representation. Because of a small managerial force it is not always possible to have as many company representatives as there are employee representatives. Under the plan of the Standard Oil Company of New Jersey, the men elected their representatives by secret ballot, one for every 150 employees, with at last two from each division of the works. These representatives and those of the company met in joint conference to handle such matters as wages, hours, and working conditions. Some of these matters were delegated to sub-committees but the joint committee was always a court of appeal. There was also the right of appeal to the highest officials of the company. The joint conference entered into a joint agreement which

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<sup>21</sup> See John Leitch, *Man to Man* (Forbes, 1919).

was set down in writing. In the original agreement an employment department was provided for. The agreement was quite detailed as regards discipline, containing a list of offences automatically punishable by discharge which included such things as violation of the civil law, violation of certain necessary rules, failure to report accidents, and the like. No offence other than the ones definitely specified in the agreement might be penalized by immediate discharge. An employee might at any time have his case laid before the joint conference and if still dissatisfied might appeal it to the highest officials. Wage adjustments were made in the joint conference but had to have the approval of the board of directors before being put into effect.

The employee-committee type of plan was generally found in smaller companies. Any action of the committee, since the management was not formally represented in it, was purely advisory in nature so far as it affected the policy of the management. The committee considered all matters brought before it either by the management or by the workers and after discussion a vote was taken. A majority vote was considered to represent the attitude of the employee group as a whole and was transmitted to the management as a recommendation. The fact that the management was not officially represented on the committee did not mean that there was no direct contact. Oftentimes representatives of the management attended committee meetings and the various members of the executive staff were frequently consulted regarding policies affecting their respective departments.

The procedure for handling employee grievances was usually much simpler than under the joint-representation type of plan. The department representative presented a complaint to the committee, and the committee first took the matter up with the foreman, and then, if no agreement was reached, with the next higher officers. The plan usually called for no further action if the president of the company, or the highest executive officer in the plant, vetoed the recommendation.

The most significant characteristic of the employee association was that it was modeled to some extent after the trade union. In some cases the organization was financed by the company itself, in others dues were collected from the membership. All workers, except those in supervisory positions or having the power to employ or discharge workers, were eligible to join, and in a few cases membership was compulsory. The local, consisting of elected employee representatives, was at the base of the structure. Then there was the general committee composed of a representative from each local or craft and directed by executive officers of the association. The general committee dealt with the general manager or other higher officials

while the local dealt with the foreman and the master mechanic. Sometimes the various crafts were separated into distinct units.

An example of the employee-association type was found in the Interborough Rapid Transit Company of New York City. All the employees of the company belonged to the organization, and until Section 7(a) of the N. I. R. A., and later, Section 7 of the N. L. R. B. put a stop to such a practice, every employee had to agree not to become identified with a trade union. There were five main departments in the association, based on type of occupation, and within each department were local organizations. The number of local organizations varied from three in the station department to ten in the transportation department. The general committee, composed of representatives elected on the basis of one for every 250 workers, was the supreme governing body and was empowered to attempt adjustment of all questions regarding wages and working conditions that might arise from time to time.

The officer of the local dealt with the appropriate company official concerning the complaint of an individual member, and if necessary the matter might have been carried as high as the general committee. If it became desirable for the general committee to deal with the management, the president of that committee appointed a special committee to meet with the general manager of the company. In case these two were unable to agree, the board of arbitration was appointed by joint action of the association and the company, and its decision was binding upon both parties. A significant feature of the plan was that questions of discipline and efficiency were not subject to arbitration.

It will be noted that under all types of plans the management participated at some stage in the consideration of the matters under discussion. Most of the plans provided for regular and fairly frequent meetings of the shop committee or works council. The usual practice seems to have been to hold the meetings during working hours, only three plans in industrial establishments specifying that meetings shall be held outside working hours. One of the most common criticisms of employee representation is that the worker is not in a position to present his case to the management with the requisite vigor because he is dependent upon the management for his job. Some effort was made to prevent reprisals. To include a statement, as was sometimes done, that representatives should not be discriminated against is of course meaningless, but some plans had more explicit provisions. In some cases the representative had the right of appeal to the highest official in the company, and under a number of plans he might have carried his case to arbitration. Arbitration was provided for in approximately 51 per cent

of employee-representation plans,<sup>22</sup> being most common in the joint-representation type.

What was employee representation expected to accomplish? Official statements of purpose are often meaningless, but in view of the struggle that went on between trade unionists and the advocates of employee representation, the statement of Mr. Walter D. Teagle is particularly interesting. In his report to the Business and Advisory Council for the Department of Commerce he said, "Employee representation has these definite aims: to furnish facilities to adjust grievances and prevent injustice; to serve as a means for collective bargaining on wages, hours and working conditions; to provide for the exchange of information and opinions between management and employees; to educate employees and executives to understand the viewpoint and problems of each other; to promote efficiency, economy and safety and to strengthen morale."<sup>23</sup>

Actions speak louder than words, however, and a look at the record of employee representation may give a more complete picture of its aims. There is little doubt that some employers sincerely desired to make their plants more "democratic." The emotions stirred up during the First World War by the appeal "to make the world safe for democracy" undoubtedly caused many employers to search their hearts. The worker himself was demanding a position in industry comparable to his political status, and such industrial leaders as Litchfield, Dennison, and Filene were not only vocal in their plea for a more democratic organization of industry, but they clearly demonstrated their sincerity by putting democratic principles to work in their own plants.

Paul Litchfield gave another motive for introducing employee representation when he stated that any attempt on the part of the employer to prevent the laborer from being represented in the management of the business to the extent to which he has taken a risk "will result in a discontented labor force, based upon a feeling of injustice, which will so adversely affect production that the interests of those who furnish the capital and who buy the product will be in jeopardy."<sup>24</sup>

The employer definitely wants to build up good will, he realizes that good will is essential to the success of his business; but good will is an intangible asset and employers are not satisfied to deal solely in intangibles. They are also interested in practical results in the form of increased

<sup>22</sup> National Industrial Conference Board, *Collective Bargaining through Employee Representation*, p. 36 (1933).

<sup>23</sup> Walter D. Teagle, *A Report to the Business Advisory and Planning Council for the Department of Commerce*, pp. 2-3 (1934).

<sup>24</sup> Paul W. Litchfield, *The Industrial Republic* (Houghton Mifflin, 1920), p. 76.



efficiency. This is shown by the definite provisions in a number of plans for the promoting of increased efficiency. Not only was machinery provided for receiving and considering suggestions from employees, and these at times turned out to be unexpectedly valuable, but some works councils appointed special committees to consider various efficiency problems. For example a committee was appointed to consider the problem of developing better methods of production, another to work out improvements in the quality of the product, and so on. Tangible results have been obtained in this manner.

Oftentimes employee organizations were charged with the responsibility of administering various activities that the employer wished to introduce, such as recreational and educational programs, benefit plans, and similar features. This not only relieved the employer of tasks which he might have found irksome, but it undoubtedly enabled him to obtain better "good will" results from these activities. They smack less of paternalism when administered largely by the employees themselves.

Robert W. Dunn, an extreme critic of employee representation, charges, "They want something immediate, such as a wage reduction, the acceptance of a speed-up plan, or the abolition of some 'restrictive' rule. Although the company has the economic power to do this without the workers' sanction or consent, the most 'enlightened' employers realize that to have a long discussion of the problem, thus giving the workers a sense of legislating about the matter, may help to 'put over' the company proposition. The plan merely gives a tinge of democracy to the autocratic dictatorship of management."<sup>25</sup> This may be an extreme statement of the case but there is little doubt that many employers, whatever their original motives may have been, found it easier to perform certain difficult and unpleasant tasks through employee committee. It does not follow, of course, that in every instance the employer was trying "to put one over" on his employees. He might merely have wished them to see his position in a very difficult situation, and the shop committee was an effective means of doing this.

It can be definitely stated that employers hoped by means of employee representation to reduce the amount of industrial friction. They realized the great value of keeping a channel of communication constantly open between themselves and the men in their employ. With few exceptions the employers were by one method or another trying to provide a satisfactory arrangement for talking things over with their men. They were realizing more and more that little grievances quickly become big ones, and that some provision for adjustment of these grievances while they were in an

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<sup>25</sup> Robert W. Dunn, *The Americanization of Labor* (International Publishers, 1927), p. 138.

embryonic state was the best possible insurance against acute industrial disturbances.

While it is a precarious undertaking to try to measure motives, it nevertheless seems fairly apparent that one cause for the spread of employee representation was the employer's desire to frustrate the union. In passing it should be mentioned that there was probably some employers who had no thought of the union in mind, or at least who thought of it only in the vaguest way. In some cases the union had never threatened and there had not been the slightest prospect of union organization when the plan was introduced. On the other hand, it is a matter of observation that the presence of a union or the threat of one has played an important part in the development of employee representation.

Employee committees are not new, in fact they are almost as old as the industrial system itself. Almost from the beginning of modern industry it has seemed imperative to the workers to get themselves represented by some kind of committee. These first groups of representatives had no elaborate system of rules and regulations to govern their procedure and usually there was nothing permanent about them. When a grievance developed and with it the need to deal with the employer, the employees simply selected some of their number to make the approach. Hence it is hardly accurate to regard these early committees as the forerunners of the elaborate system of employee representation. They are more properly thought of as forerunners of the modern trade unions, into which some of them actually developed. Like the trade unions they sprang up solely on the initiative of the employees, whereas the modern employee-representation movement, in the United States at least, was the outgrowth largely of initiative on the part of the employers.

Employee committees of the modern type are known to have existed in Germany as far back as 1873. A plan of industrial representation was presented by the Industrial Commission of the German Constitutional Assembly held at Frankfort in 1849 but was not adopted. It is interesting to note that the plan of industrial representation which was incorporated in the law of Germany in 1920 was quite similar to the one recommended back in 1849. The development of employee committees on a large scale, however, has taken place quite recently and may accurately be designated as a strictly modern movement. The greatest development of workers' committees and works councils has taken place in Great Britain, both before and since the First World War. The Whitley Councils, established as the result of a report made in 1917 by the British Reconstruction Committee's Sub-Commission on Relations between Employers and Employees, are

perhaps the best known and in some ways the most significant of works committees.

In the United States the movement has not attained the magnitude that it has reached in the European countries and furthermore is different in several important respects. In fact, it may be that these differences should be held largely responsible for the movement's failure to progress so rapidly in the United States. Of course it is not so old here; but more important, possibly, is the fact that instead of developing in cooperation with the trade unions it has had to contend against their opposition. Little impetus has come from the unions or, as was the case in Europe, from the government, except during the First World War. Moreover in this country, except in a very few cases, the movement remained in the hands of the individual employer, while in Europe it blossomed out into district parliaments and even national ones.

The oldest recorded employee-representation plan in the United States was put into effect by the Nerst Lamp Company of Philadelphia in 1904, but the company has changed hands since and the plan has been abandoned. There is also record of an "advisory committee plan" instituted in the American Rolling Mill Company in 1904. E. A. Filene set up a system of shop committees among the employees of his department store in 1905. The Nelson Valve Company of Philadelphia, a small factory employing about a hundred men, installed a plan of employee representation in 1907.<sup>26</sup> In 1912 John Leitch, the industrial evangelist, introduced his plan of "industrial democracy" for the first time. Following its adoption by the Packard Piano Company a number of other companies took this plan up.<sup>27</sup>

The shop committee as a method of employee representation was for the first time introduced by a large corporation when in 1915 the Colorado Fuel and Iron Company offered a plan to its employees after a bitter but fruitless strike for recognition of the union. The White Motor Company started a plan in the same year. During the First World War the movement received great impetus as a result of the policy of the War Labor Board. In its statement of principle this body upheld the right of workers to bargain collectively with their employers. It was not unnatural that the Board should see fit in many of its decisions affecting companies in which no form of employee organization existed to require that machinery be set up within the company for collective bargaining with the management. More than 125 of the Board's awards included a provision calling for the

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<sup>26</sup> Carroll E. French, *The Shop Committee in the United States* (Johns Hopkins Press, 1923), p. 16.

<sup>27</sup> John Leitch, *Man to Man* (Forbes, 1919).

establishment of some form of employee representation.<sup>28</sup> Other government bodies, such as the Shipbuilding Labor Adjustment Board, the President's Mediation Commission, the United States Fuel Administration, and the United States Railroad Administration, also utilized employee representation as a means of solving labor difficulties. There were also a growing number of concerns that introduced employee representation voluntarily.

Following the First World War, when government supervision of industry by special boards was terminated, a larger number of the plans that had been introduced under government compulsion were abandoned and others were radically changed. Despite this the net effect was an increasing popularity of this type of employer-employee negotiation. In 1922 the National Industrial Conference Board conducted a survey which showed that 77 plans were abandoned between 1919 and 1922 while 317 new ones were adopted, making a total of 385 companies with active works councils in 1922.<sup>29</sup> The high point was reached in 1926 when 432 companies were found to have works councils. Counting separately the number of councils in companies that operated more than one plant there were found to be 913 active works councils covering 1,369,078 employees.

The depression was bound to have an effect upon employee representation as upon the whole fabric of industrial relations. Not only were companies forced to abandon many activities that were not absolutely essential, but the works councils that survived were called upon to deal with many disagreeable and difficult matters that put the system itself to a severe test. In 1932 employee representation was found to be effective in 313 concerns, which indicated a decline of 27.5 per cent from the high point in 1926. The number of works councils declined 16 per cent. A very significant disclosure was that the number of employees covered by such plans declined by 7.9 per cent during that period. Apparently it was chiefly the smaller concerns that gave up their plans. Another significant fact is that over 85 per cent of the employee-representation plans found to exist in 1932 had been in continuous operation for more than ten years.<sup>30</sup>

On June 16, 1933, the National Industrial Recovery Act was enacted. Probably no section of the act gave rise to greater discussion and greater controversy than Section 7(a), which dealt with relations between employers and employees. It soon became evident that the trade unions were going to take advantage of the provision that "employees shall have the

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<sup>28</sup> National Industrial Conference Board, *Collective Bargaining through Employee Representation*, p. 8 (1933).

<sup>29</sup> *Ibid.*, p. 12.

<sup>30</sup> *Ibid.*, p. 16.

right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." The trade unions began to make strenuous efforts to organize the workers into unions and were soon claiming remarkable success. The employers felt that they could not sit idly by and they too began an offensive. Many employers undoubtedly desired neither trade unionism nor employee representation, preferring to conduct their employer-employee relations on an individual basis; but if they had to decide between trade unionism and employee representation they were apt to choose the latter. It was inevitable, therefore, that a rapid expansion of employee representation should take place. And the trade union and employee representation thereby became joined in open conflict as they had never been before.

The National Industrial Conference Board again performed a notable service in its attempt to get accurate information concerning the growth of employee representation subsequent to the enactment of the N. I. R. A. A survey was conducted in November, 1933, among 3315 companies in manufacturing and mining having a capitalization of \$500,000 or over. These concerns reported an aggregate of 2,585,740 wage earners who represent approximately 27 per cent of the estimated total number of workers employed in these two fields.<sup>81</sup>

The results of the survey indicated that 1,180,580 employees were still being dealt with on an individual basis, whereas 1,164,294 were included in some form of employee-representation plans, and but 240,866 workers were operating under union agreements.<sup>82</sup> In its 1932 study the Board found a total of 432,945 wage earners in manufacturing and mining covered by employee-representation plans. The 1933 figures, therefore, represent an increase of 169 per cent over the year before. The survey also showed that only 11.6 per cent of the employee-representation plans covered were introduced before 1920. Only slightly more than a third of the plans had been introduced before the enactment of the N. I. R. A., whereas 61.3 per cent were introduced after it. This growth lasted through 1935 but the Conference Board's survey for 1939 shows the larger percentage of the cooperating companies and the larger percentage of the nearly 5 million

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<sup>81</sup> National Industrial Conference Board, *Individual and Collective Bargaining under the N. I. R. A.* (1933).

<sup>82</sup> The discrepancy between the total of these three figures and the total number of workers covered by the survey is explained by the fact that in some cases workers are included in more than one type of employer-employee policy.

workers covered, were using collective dealing with trade unions. A considerable number of firms continued to bargain with trade unions.

Perhaps the most striking revelation of the survey is the relatively small number of wage earners found to be dealing with their employers on an individual basis. Although 43.2 per cent of the cooperating companies reported individual dealing only, these firms employed only 18 per cent of the covered workers. Clearly there was a continued drift toward some form of collective bargaining.

As previously stated, the passage of the National Labor Relations Act brought an official end to the company dominated unions. Even the terms have changed meaning since that time. Whereas an independent union formerly meant independence from company domination, the term now means independence from one of the national or international unions; furthermore, a company union today usually is an organization of the workers of one company, independent of both corporation and a national union.

It remains, then, to consider employee representation in the light of an alternative to trade unionism as a form of collective bargaining. It can be stated at once that organized labor has on the whole been definitely opposed to the shop-committee plan in which the union is not recognized, and it is accurate to say that what is known in this country as employee representation has developed outside the trade union. The first point that should be cleared up is the idea that the trade union should get behind the movement as it has done in England. This might be a reasonable view if conditions were the same in the two countries, but they are not the same. The unions are behind the Whitley Councils in England chiefly because they are recognized in these councils as the spokesmen for labor. The unions select the representatives of the employees who are to meet the representatives of the employer. Another difference of great importance to the trade unions is that the Whitley Councils are national in scope whereas employee representation in the United States, with few exceptions, has been limited to single plants. Doubtless the American trade unions would take a friendlier attitude toward employee representation if they were allowed to select the representatives and were the national union recognized.

The American Federation of Labor officially opposes the shop committee unless it is supplemented by a trade-union agreement. Union recognition is necessary to gain the support of organized labor, and without such recognition the shop committee is regarded as a delusion and a snare. At the 1927 convention of the Federation a resolution was adopted condemning the "company union" in no uncertain terms. The resolution declared in part:

"The 'company union' is a manifest fraud and serves no purpose other than to prevent workers from acting together in their own interests. The 'company union' is, as the Council states, 'an agency for administering the affairs of a company,' as against the interests of the men employed by the company."<sup>33</sup> The bitter fight that organized labor continues to wage against company dominated unionism is clear evidence that its opposition has increased rather than diminished in the ensuing years.

Is there any good reason for this extreme hostility on the part of the trade unions to employee representation? The fundamental objection of the unionist is stated somewhat bluntly by a man who has served as an industrial adviser to some of the largest concerns of the country: "After all, what difference does it make whether one plant has a 'shop committee,' a 'works council,' a 'Leitch plan,' a 'company union,' or whatever else it may be called? These different forms are but mechanics for putting into practice . . . 'factory family relations' and local shop expression."<sup>34</sup>

There has been too close and too frequent a connection between the threat of unionism and the introduction of employee representation to leave much doubt that in a great many cases the employee-representation plan has been seized upon because it is a good anti-union weapon. Employee representation was put into effect in the Colorado Fuel and Iron Company in 1915 soon after a rather severe struggle with the miners' union, and practically the same plan was adopted by the Standard Oil Company of New Jersey hard on the heels of a strike in the Bayonne, New Jersey plant. During the First World War the plan was put into effect in many plants where trade unionism had tried to gain a foothold and had failed. The campaigns to organize the iron and steel workers in 1916 and 1919 were accompanied by the adoption of employee-representation plans in many of the steel plants. The same can be said of the International Harvester Company, the Willys-Overland Company, and the Goodyear Rubber Company. The Western Union Telegraph Company refused to recognize the telegraphers' union and organized a works council which proved to be an effective weapon in the 1919 strike. The shop-committee plans of the Kirschbaum Clothing Company of Philadelphia and the Michael-Stern Company of Rochester seemed to have been adopted to prevent the Amalgamated Clothing Workers' Union from making its way into these plants. Soon after the end of the First World War some of the big meat-packing concerns put into effect employee-representation plans, and at about the

<sup>33</sup> American Federation of Labor, *Proceedings*, 1927, p. 318.

<sup>34</sup> Quoted by Paul H. Douglas, "Shop Committees," *Journal of Political Economy*, 29:93 (Feb., 1921).

same time the trade unions lost the foothold in that industry which the war had enabled them to acquire. In 1925 the Brotherhood of Railway Clerks made demands upon the Texas and New Orleans Railroad Company for wage increases, and to avert the possibility of an increased budget the latter proceeded to organize a company union. Few will doubt that the spectacular increase in employee representation plans subsequent to the enactment of the N. I. R. A. must be explained to some extent by a desire on the part of the employers to fend off the union.

Other instances might be cited, but it seems perfectly clear that on certain occasions at least the employee-representation system has been employed as a contraceptive measure. The very fact that with few exceptions the shop-committee plans have ignored the trade unions is sufficient to carry the point. There is no reason to believe that the unions would not cooperate if they were invited to do so. The course of shop committees in England and in other European countries is proof that the trade unions are not opposed to shop committees as such, but only to the principle of ignoring the union. As a matter of fact, in its 1918 convention the American Federation of Labor went on record as favoring a shop-committee system that would operate in conjunction with the trade union.<sup>35</sup>

That organized labor means what it says when it declares its willingness to cooperate with the employer in shop-committee plans has been clearly demonstrated by the experience of the Baltimore and Ohio Railroad and other companies which have put into effect what has come to be known as "union-management cooperation." The details of such schemes differ somewhat from employee-representation plans but the main emphasis in each case is upon consultation between employer and worker. Otto S. Beyer, Jr., under whose supervision the B. and O. plan was developed, lays down seven basic requirements which he believes must be met before genuine cooperation can take place. They are (1) full and cordial recognition of the standard unions as the properly accredited agents to represent railroad employees with management; (2) acceptance by management of the standard union as helpful, necessary, and constructive in the conduct of the railroad industry; (3) development between unions and management of written agreements governing wages, working conditions, and the prompt and orderly adjustment of disputes; (4) systematic cooperation between unions and management for improved railroad service and elimination of waste; (5) stabilization of employment; (6) measuring, visualizing, and sharing fairly the gains of cooperation; (7) perfection

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<sup>35</sup> American Federation of Labor, *Proceedings*, 1918, pp. 328, 330.



of definite joint union-management administrative machinery to promote cooperative effort.<sup>36</sup>

In 1930 a plan of union-management cooperation was actively in effect on four major railroad systems in the United States and Canada, which together held about one-sixth of the total combined railroad mileage of the two countries.<sup>37</sup>

The fundamental issue between the trade union and employee representation was clearly brought out in the President's First Industrial Conference of 1919. Both the employer group and the employee group accepted collective bargaining as the only sound method of handling labor matters in industry. The two groups could not, however, agree upon a definition of the term, and it was largely on this rock that the conference split. To the public it seemed that the representatives must be pretty stubborn to ruin an important conference just because they could not agree on a definition. Why not look the words up in the dictionary and let it go at that? Unhappily, the problem is not so simple. The very life of the trade union hangs upon that definition.

The employers insisted that the unit of collective bargaining should be the shop and that "the establishment rather than the industry as a whole or any branch of it should, as far as practicable, be considered as the unit of production and mutual interest on the part of employer and employee." They found no serious fault with collective bargaining as such, but they did object to bargaining with outsiders, with intruders who had nothing whatever to do with the establishment. The business was theirs and they would deal only with the men whom they had employed. This, of course, simply amounted to shutting the door in the trade-union's face, turning the key, and sliding the bolt. For the trade union covers or attempts to cover all the workers in the industry, or in the craft as the case may be, and its representatives are hired by it and not by any employer. The clash was over a definition, but over a definition fraught with momentous implications. It was a clash between employee representation and the trade union, and it clearly revealed the essential quarrel between the two.

In view of the sustained opposition of the trade unions to employee representation it seems best to point out some of the latter's weaknesses as they appear to the unionist. It might be mentioned at the start that one feature that is a source of great irritation is that the management is usually admitted to meetings of the committees. As a matter of fact in the

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<sup>36</sup> *Bulletin of the Taylor Society*, Feb., 1926, p. 7.

<sup>37</sup> Louis Aubrey Wood, *Union-Management Cooperation in the Railroads* (Yale Press, 1930), p. 5.

Colorado Fuel and Iron Company plan, the Standard Oil Company plan, and a number of other plans no provision was made for a separate meeting of the employees at all. Joint conferences were the rule and the only rule. Even where the employees did meet as a group, there was nothing particularly secret about their gatherings. The management, of course, is not admitted to union meetings and it has no access to union plans except as it obtains its information through a spy system of some kind. The unionists regard the right to meet privately as an exceedingly important right.

It should be further kept in mind that the basis policy of trade unionism is the policy of standardization. This policy is adopted in order to eliminate competition, thereby preventing wages from being depressed and other conditions from being made less favorable to the workers. Theoretically the organization should cover the area of competition. The significance of this principle is demonstrated by the great difficulty which national unions experienced in organizing prior to the Civil War, before the new transportation had materially broadened the area of competition. If we learn anything from trade-union history in the United States, it is that just as any organization that attempts to go beyond the bounds of the area of competition will probably come to grief, so will any organization that fails to reach these bounds.

A very clear example of the deleterious results that follow from partial standardization is afforded by the bituminous coal industry. In 1924 the Jacksonville agreement was entered into covering the central competitive district. The employers objected to the making of the agreement and they objected to the agreement after it was made. They pointed to the operators of West Virginia and Kentucky, who had not been parties to it. Some of these were operating their mines at a wage rate hardly more than half of that fixed in the Jacksonville agreement and the large majority were paying a wage about 30 per cent less than that being paid in the union fields. The result was demoralization. Many of the operators in the central competitive field refused to sign the agreement, insisting that they could not compete with the non-union operators. Others were forced to close down, and some of these reopened later as non-union mines. Up to 1935 the industry was in a state of chaos. It must not be assumed, of course, that this was the only cause; but general unionization with a standard rate covering the entire competitive area would certainly have altered the picture.

It is evident that employee representation strikes at this basic union policy of standardization. Rates and conditions are usually fixed for a single establishment. Many establishments are without organizations of any kind. What is to prevent these unorganized plants from lowering their

rates and thus gaining a competitive advantage over the organized plants? This would probably cause the organized plants to lower their rates and at least would prevent their raising them. Even if all the plants were organized, there would be no machinery to establish a standard rate for all. Competition would still exist and would still tend to depress rates. This is obviously advantageous to the employer: but it is not advantageous to the worker, whose interests demand that standardization which the trade union, and only the trade union, supplies.

The trade union seems also to possess an advantage for the worker when it comes to bargaining. Under an employee-representation plan the bargaining is done for the worker by other workers in the plant who are elected for that purpose. Where the trade union is in control, on the other hand, the bargaining is done by the trade-union officials. The latter method seems to be more effective from two angles. In the first place it puts the negotiations in the hands of experts. The men called upon to do the bargaining are devoting their entire time to looking after the workers' interests, and it stands to reason that they will be better bargainers than men upon whom the responsibility falls more or less by accident. This is no small item. The making of a wage contract in this industrial epoch is an exceedingly complex process, demanding not only familiarity with the industry concerned but also a knowledge of general market conditions, of wage contracts in similar industries, and so forth. Moreover the driving of a successful bargain demands a measure of shrewdness that is not the property of all.

In addition to the necessity for expertness and native sharpness it is also very desirable that the negotiator have no connection with the industry concerned. There are probably many employers whose ethics, if not their first impulses, would hold them back from any sort of unfair discrimination in dealing with their employees. But the worker is at the employer's mercy and he cannot afford to take chances. In becoming active and capable in looking after the interests of his fellows he will certainly be courting unfavorable discrimination, not to say discharge, on some pretext cooked up for the occasion. Even if the discrimination never actually takes place, the fear is present and his bargaining power is weakened accordingly. The trade unionist, therefore, seems to be justified in opposing employee representation on the ground that the bargaining power of employee representatives within the plant is necessarily inferior to that of the trade-union official.

Equally important with the matter of bargaining is that of enforcement. The unions have consistently and stubbornly defended their right to strike,

a right which they consider to be absolutely indispensable to enforcement of their claims. Some of the railroad unions thought when they first organized that the strike could be dispensed with, but they were forced to put it back into their programs. This is not to imply that a union has to be striking continually; as a matter of fact the railroad brotherhoods have seldom found it necessary to make actual use of the strike. The stronger the union, as a rule, the less the necessity of striking. But the threat of the strike must be there to enforce the union's demands.

Now perhaps it is never necessary to enforce the workers' demands when employee representation is in operation. Perhaps the employer is always reasonable and perhaps the employees are never unreasonable in what they ask of him, and so there is no chance for any real disagreement. If all this be true, then of course the strike is not needed. But the whole story of employer-employee relations up to the present time throws its weight on the other side of the scale. The sum and substance of this story is nothing else than the need for the employees to exert pressure upon the employer in order to improve their economic condition to the degree that they have set their hearts upon. Under the employee-representation plan it is difficult to exert effective pressure.

It is true that strikes are not unknown in industries which have adopted employee representation. In its study of works councils the National Industrial Conference Board cites a number of cases in which strikes have resulted from attempts on the part of the employer to abolish the councils. Strikes have occurred on the subways of New York City where employee representation was in use. The installation of the employee-representation plan in the coal mines of Colorado did not prevent the employees of the Colorado Fuel and Iron Company from striking. At least one company has included the right to strike in the constitution of its representation plan. The provision reads: "The right of the employees to strike in this plant and of the management to lock-out is not impaired by this plan."

All this notwithstanding it remains true that on the whole the trade union is in a much better position to strike than is the company union. This does not mean, of course, that there are not some trade unions too weak to strike. It means simply that trade-union organization is better adapted to effective striking than is company-union organization. Should the workers withdraw from only a single plant, they would first of all lack the moral and financial support of workers in other plants. Strike benefits are exceedingly important to the prosecution of a strike, in fact, it is generally conceded that a union without a strong war chest stands a poor chance of bringing the employer to terms. Secondly, they would lack the support of

the trade union with its fund of experience in conducting strikes. Like any other maneuver the strike demands knowledge, experience, and adroit leadership.

Even if the employees under an employee-representation plan could expect to carry a strike through to a successful conclusion, it is doubtful whether under ordinary conditions the strike could be a part of their general program. Employee representation is built upon the idea that the interests of the two groups, employers and employees, are essentially common. If this means anything at all, it means that all that is necessary to industrial peace is the right machinery for talking things over. The employer could not countenance open warfare such as a strike would be, without flatly denying the fundamental concept on which his scheme is based. He does not need to countenance it. The threat of a company strike is a far less terrifying thing to meet than is the threat of a strike by a trade union. Under most plans the employees were given certain "privileges." The representation feature was frequently tied up with pension schemes and many forms of welfare work, profit sharing, stock ownership, and the like. Should the employees openly attack the employer, it seems reasonable to expect that some if not all of these privileges would be withdrawn.

Finally our study of trade unionism has shown us that the unions do not confine their activities to bargaining with the employer. In America this is probably their leading function, but even in this country they have found other important duties to perform. The public must be educated to an understanding of the workers' point of view if it is ever to become sympathetic with the labor program. Favorable legislation must be obtained. The American unions, although they place their greatest trust in collective bargaining, have found that the workers' interests cannot be fully protected without a great deal of legislation. Such functions as these the national and international unions with their state and national federations are in a far better position to perform than are the company unions which in the United States are usually confined to single establishments. In fact, it is doubtful if the latter organizations could do this sort of things at all.

Although it undoubtedly has legitimate grounds for opposing the company unions, it must not be concluded that the trade union is at all times the good angel of the workingman, ever awake to his needs and ever ready to come to his aid when he is threatened by some dangerous monster—such as employee representation. One reason why the latter has been able to wear seven-league boots in the United States is that the American trade

union has been either asleep or selfish, or both. The trade union has not until recently met the problem of the unskilled laborer. In fact, until very recently the American Federation of Labor has practically ignored the great mass of unskilled workers. No wonder the company union found its way into some of the biggest industries of the country, such as iron and steel, oil, and rubber, when the trade union had failed to make a dent in them. As we have seen previously, however, these industries are now practically 100 per cent organized.

Note also that laborers themselves have sometimes chosen the company union rather than the trade union. When the Philadelphia Rapid Transit Company introduced its plan, for example, it proposed that if two-thirds of the force so voted, the company would deal with the union. Twice this was put to vote, and twice the offer was rejected. After the unions have had their full say concerning the employer's anti-union motives in introducing employee representation, it remains true that some employers stood ready to cooperate with the trade union in introducing works councils but found that the union had not gained the worker's confidence to the extent necessary for active union cooperation.

This situation remains true today even with the protection of the National Labor Relations Act. Each year some workers vote to have a union represent them which is not connected with any of the national organizations. These unions, to be sure, are no longer company sponsored or dominated but they have won the workers' confidence.

Needless to say it does not follow that employee representation should be utterly condemned. It may under certain conditions meet an urgent need in the industrial organization. Mr. Henry Dennison, a pioneer in the development of employee representation, sees a function for each type of organization to perform. He writes, ". . . As a matter of fact, it insistently seems to me that there are functions that belong to each kind of union. There are places which each can fill. Within any given company there are likely to be places which both can fill, as we found within our experience.

" . . . A national association should have the strength to perform a defensive function in preventing aggressive action against the interests of labor on the part of employers; whereas constructive possibilities lay rather in the highly decentralized but defensively much weaker company union or shop committee plan. There is the general line of distinction of function which I suspect will be greatly refined by experience."<sup>38</sup>

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<sup>38</sup> *Proceedings of the Academy of Political Science*, 13:142 (June, 1928).

Quite probably in some places where the plan was introduced no union had existed and none had threatened, and from the workers' point of view any sort of representation is better than none at all. Furthermore it is not at all certain that the union could have done a better job of protecting the interests of the laborers than the employee-representation plan did in some of the large plants of the country. Liberal and intelligent employers have by their whole-hearted cooperation made possible a considerable improvement in the conditions of the workers in some of our important industries. Also as a transitional form employee representation had a real function to fulfill.

Moreover if it is not regarded as a substitute for trade unions but as an auxiliary organization, the shop committee can be exceedingly helpful. From the viewpoint of society as a whole, one of the great dangers in attempting to substitute employee representation for the trade union was the danger that the workers in their zeal to fight it would become blind to the possibilities of the shop committee as a helpmeet to trade unionism, and so would deprive industry of a very usable institution. The great serviceability of shop committees when employed in connection with unionism has been fully demonstrated in England.

The future of the company dominated union in the United States will depend upon congressional attitude toward amending the National Labor Relations Act. As that law now stands no company may interfere in any way with the organization of his employees. This does not mean, however, that the employees of a single company may not be organized as an independent union unaffiliated with any national organization. In fact a recent book by a member of the Massachusetts bar surveys the present law to discover how far an employer can go in his relations to such independent unions.<sup>39</sup> Certainly the law is clear both in prohibiting interference on the part of employers and on protecting the rights of workers to form independent unions if they wish. Without employer sponsorship it is doubtful that there will be much growth in these independent unions.

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<sup>39</sup> Samuel M. Salny, *Independent Unions under the Wagner Act*, Boston, Eugene W. Hildreth, Inc. (1944).

PART V  
THE GOVERNMENT



Even if it wanted to, the government could not ignore the grievances of the wage earner. The industrial conflict rages all around it and it must participate if for no other purpose than ostensibly, at least, to try to maintain law and order. It has attempted also to bring the warring parties together that they might settle their differences in an amicable way. And more and more the government is feeling itself obligated to put forth definite efforts on its own account to alleviate the grievances of the wage-earning class.

## CHAPTER XV

### THE STATE AND THE INDUSTRIAL CONFLICT

#### COLLECTIVE BARGAINING

##### *(a) Before the New Deal*

TRADE unions have been balked by the law from the very beginning, for certain "fundamental principles" have had a way of cropping up from time to time to curtail their freedom of action. None of these principles is accepted by all courts, but, collectively and separately, they have played an important part in the development of labor law.

From the standpoint of labor history the most important of these principles has been that usually called the doctrine of conspiracy.<sup>1</sup> This doctrine is, of course, not applicable solely to trade unions, but it is only in that relationship that we are interested here. The doctrine has been developed for the purpose of protecting an individual from being coerced by a group. Although it has not been explicitly defined, its purport seems to be that an act which is quite lawful when performed by a single individual may become unlawful when performed by a group of individuals acting in concert. Combination in itself is not illegal, but it becomes so if used to injure some one else, which is an unlawful purpose. Any act becomes illegal when the object or purpose in pursuance of which it is performed is illegal. The courts have also held that an act which is otherwise legal may be illegal if unlawful means are used in performing it.

Furthermore if a conspiracy exists, if a plot has been formed to accomplish an illegal purpose or if illegal acts are performed to accomplish a legal purpose, all of the conspirators are responsible for any or all of the acts performed by any of the conspirators in the pursuance of the common act. It makes no difference whether they themselves participated in the illegal parts of the act or even whether they had any knowledge of them, they are liable just the same.

From the foregoing it should be clear that the question as to whether or not a particular combination constitutes a conspiracy rests entirely with

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<sup>1</sup> For a comprehensive discussion of this doctrine, see J. W. Bryan, *The Development of the English Law of Conspiracy* (Johns Hopkins Press, 1909).

the court. The court must decide whether the purposes or the methods are illegal; and in reaching such decisions, especially in this country, they have had little statutory guidance. One of the earliest tests to be used was that of motive. In applying this test to the unions the courts had to determine whether the members of the union were aiming primarily to benefit themselves or to harm the employer. In such circumstances the personal bias of the judge becomes a determining factor in the outcome.

In an attempt to bring a semblance of order out of this chaos some of the courts have abandoned the old concept of the doctrine of conspiracy and have tried to distinguish between malice in fact and malice in law. These courts hold that the question whether the workmen are influenced by personal ill-will (malice in fact) is of no importance. The legality of their actions is determined by malice in law, which is an intentional infliction of injury without justification. If malice in law is to be the determining factor, then everything turns upon the interpretation of the phrase "without justification." This interpretation necessarily involves an evaluation of the rights of employers and employees, which again rests with the courts.

The doctrine of conspiracy was applied with telling effect in the early days of English trade unionism. No serious attempt was ever made in the United States to fight trade unions by means of laws forbidding them to organize; but for a time at least, in the early part of the nineteenth century, it looked as though the courts were going to apply the doctrine of conspiracy under the common law. During this period a number of trials were held, in which the cases showed a general similarity. The employers' lawyers usually based their pleas upon the English common law of conspiracy, and the laborers usually retorted that they did not come under the jurisdiction of the English common law since the colonies separated themselves from England. But the English law of conspiracy was held to be in force.

Although the employers were successful in getting the doctrine of conspiracy under the common law applied in labor cases, they did not succeed in having all combinations to raise wages declared illegal *per se*. As a matter of fact, after the early part of the nineteenth century it became pretty well established that combinations of laborers for the purpose of furthering their own interests, including the raising of wages, were legal and could not be attacked as criminal conspiracies.<sup>2</sup> Yet despite the *Commonwealth v. Hunt* decision and despite the enactment of legislation in a number of states which expressly legalized combinations of workers to raise

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<sup>2</sup> The leading case on this point was *Commonwealth v. Hunt*, 4 Metcalf 111 (Mass., 1842).

wages or to reduce the hours of labor, "criminal prosecution for conspiracy continued to be quite frequent until about 1890, and thereafter ceased to be of much importance only because injunctions had become the most usual form of action in labor disputes."<sup>3</sup>

At the present time, however, most courts say little about either the element of combination or that of motive. The "just-cause" theory, first expounded by Justice Holmes, then of the Massachusetts Supreme Court,<sup>4</sup> now prevails in court decisions in labor cases. This theory assumes that everybody is entitled to free and unobstructed access to the commodity market and to the labor market and hence that anyone who intentionally interferes with this right is *prima facie* guilty of a wrongful act. However, an effective rebuttal has been given if it can be shown that there was a just cause for the interference. And just cause consists in the exercise of an equal or a superior right. When analyzed, however, this theory differs but little from the conspiracy and the malice doctrines. The crucial question is, of course, whether labor acts in pursuance of rights equal or superior to those of the employer. But how is this to be determined? Justice Holmes, who first expounded the theory, usually held for labor, while the Massachusetts Supreme Court, which has carried the just-cause theory furthest, has generally held against labor. Again, upon analysis, the economic sympathies of the judge seem to be the determining factor.

The restraint of trade doctrine has also been of great historical significance in the development of labor laws. The test of the legality of the workers' and the employers' conduct in labor controversies is whether or not it restrains trade. In early American labor cases this doctrine was closely bound up with the conspiracy doctrine, but in recent times it has been resorted to principally in cases arising under federal anti-trust acts. Not all conduct which restrains trade is unlawful. As was clearly brought out in the Standard Oil and American Tobacco cases in 1911, only *unreasonable* restraints of trade are unlawful. No other view has ever been held in labor cases.

The unions did not sense their imminent danger of being held to be a combination in restraint of trade under the Sherman Anti-Trust Act of 1890, and thereby liable for triple damages, until this was brought forcibly home to them in the Danbury Hatters' case. The facts in this case were briefly as follows: The United Hatters of America attempted to unionize the Loewe factory at Danbury, Connecticut. In so doing they attempted

<sup>3</sup> John R. Commons and John B. Andrews, *Principles of Labor Legislation* (Harpers, 1936), p. 383.

<sup>4</sup> Oliver Wendell Holmes, "Privilege, Malice, and Intent," *Harvard Law Review*, 8, 114 (1894).

a rather extensive boycott, trying to induce dealers all over the country not to trade in Danbury hats. This constituted restraint of interstate commerce. The case was in the courts for a number of years and finally the Supreme Court of the United States decided against the union, levying triple damages amounting to \$300,000 and holding the individual members of the union liable.<sup>5</sup>

After paying the triple damages the union tried to recover them, and this case also dragged through the courts for a number of years. In rendering its decision against the union in 1915 the Court made this significant statement: "If these members paid their dues and continued to delegate authority to their officers unlawfully to interfere with the plaintiffs' interstate commerce in such circumstances that they knew or ought to have known, and such officers were warranted in the belief that they were acting in the matters within their delegated authority, then such members were jointly liable and no others."<sup>6</sup>

In 1914, with the help of a friendly administration, organized labor succeeded in obtaining what seemed to be extremely favorable legislation in the shape of the Clayton Act, hailed at the time by the A. F. of L. as the Magna Carta of labor. The two sections of this act which are important to labor are Sections 6 and 20. Section 6 declares "that the labor of a human being is not a commodity or article of commerce," and also specifies that labor organizations are not to be construed as illegal combinations or conspiracies in restraint of trade under the federal anti-trust laws. Section 20 is even more significant. It provides that "no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment," shall prohibit the refusal to patronize, peaceful picketing, or peaceful persuasion; "nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States."

The harvest of results from this act has been slender indeed. Judicial interpretation has practically nullified it. In its convention of 1925 the A. F. of L. frankly acknowledged that the Clayton Act had fallen far short of its expectations and announced that it had decided upon an entirely new approach to the problem.

Several decisions have been rendered by the United States Supreme Court in interpreting the Clayton Act. The most significant of these were given in the Truax case (1921), the Duplex Printing case (1921), and the Coronado Coal Company case (1922). In the Truax case the Court

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<sup>5</sup> *Loewe v. Lawler*, 208 U. S. 274 (1908).

<sup>6</sup> *Lawler v. Loewe*, 235 U. S. 522 (1915).

declared unconstitutional an Arizona law in which the labor clauses of the Clayton Act were reproduced verbatim, holding that if the means used were illegal, concerted action by the union would become illegal, and that it would therefore follow that the law which operated to make these means legal deprived the plaintiff of his property without due process of law.<sup>7</sup>

In the Duplex case the union placed its dependence entirely on the immunities granted by the Clayton Act. In this instance the machinists' union had carried out an elaborate secondary boycott in New York. Members of the union, none of whom were employees of the factory, tried to prevent the installation and operation of Duplex processes. An injunction was granted and the court confirmed it on the ground that the words of the Clayton Act "operate to confine the restriction upon the grant of injunctions, and also the relaxation of the provisions of the anti-trust and other laws of the United States, to parties standing in proximate relation to a controversy such as is particularly described."<sup>8</sup>

The Coronado case, although won by the national union, establishes a principle that is capable of seriously hampering the future development of unionism. In this case a mine manager tried to run an open shop, and the company's property and the strike breakers were violently attacked by the local union and its sympathizers. The union was sued by the company under the anti-trust law as a combination in restraint of trade and triple damages were asked.

The Court decided that in this instance the lessening of the competition of non-union coal was not a primary motive. However, "if unlawful means had here been used by the National body to unionize miners whose product was important, actually or potentially, in affecting prices in interstate commerce, the evidence in question would clearly tend to show that that body was guilty of an actionable conspiracy under the Anti-Trust Act."<sup>9</sup> Thus, although the union won an immediate victory in that it did not have to pay triple damages under the Sherman Act, it was called upon to face a grave possibility for the future; for it became clear as a result of this decision that a union as an organization, even though it is unincorporated, is subject to suit under the anti-trust laws.

A discussion of the legal status of collective bargaining would not be complete without some reference to what happened during the period of the First World War, and these events are particularly pertinent to a consideration of collective bargaining since the advent of the New Deal be-

<sup>7</sup> *Truax v Corrigan*, 257 U. S. 312 (1921).

<sup>8</sup> *Duplex Printing Press Co. v. Deering*, 254 U. S. 443 (1921).

<sup>9</sup> *United Mine Workers v. Coronado Coal Co.*, 259 U. S. 344 (1922).

cause of the bitter controversy over the legal status of employee representation as a form of collective bargaining.<sup>10</sup> The Shipbuilding Labor Adjustment Board was established by the government to act as a central board of arbitration for the shipbuilding industry, and to facilitate the handling of grievances it introduced the shop committee at a number of points. On October 24, 1918, the Board handed down a decision which authorized the use of shop committees for all shipyards where the owners were "not parties to joint agreements with the labor organizations of their respective districts."<sup>11</sup> The United States Railroad Administration and the Fuel Administration also made use of the shop committee as a device for the settlement of grievances.

It was in manufacturing, however, that the problem of collective bargaining was brought out in clearest relief. The War Labor Conference Board, composed of an equal number of representatives of employers and employees with two impartial chairmen, was formed in January, 1918. This Board recommended the formation of a National War Labor Board to adjust labor disputes in war industries. It also drew up a series of guiding principles for this Board to follow, among which were the following:<sup>12</sup>

"1. The right of workers to organize in trade-unions and to bargain collectively through chosen representatives is recognized and affirmed. This right shall not be denied, abridged, or interfered with by the employers in any manner whatsoever.

"2. The right of employers to organize in associations or groups and to bargain collectively through chosen representatives is recognized and affirmed. This right shall not be denied, abridged, or interfered with by the workers in any manner whatsoever.

"3. Employers should not discharge workers for membership in trade-unions nor for legitimate trade-union activities.

"4. The workers, in the exercise of their right to organize, shall not use coercive measures of any kind to induce persons to join their organizations, nor to induce employers to bargain or deal therewith."

This constituted a clear endorsement of collective bargaining on the part of an official government agency. True, in return for this, the union agreed to give up the use of coercive measures in dealing with the employer,

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<sup>10</sup> See below, pp. 409 ff.

<sup>11</sup> Paul H. Douglas and F. E. Wolfe, "Labor Administration in the Shipbuilding Industry During War Time," *Journal of Political Economy*, 27:370 (May, 1919).

<sup>12</sup> L. B. Wehle, "War Labor Policies and Their Outcome in Peace," *Quarterly Journal of Economics*, 33:334 (Feb., 1919).

a concession that it would never have granted voluntarily in normal times. The thing virtually represented a truce between the employers and the employees, and so could only be an emergency measure. Another significant point to note is that from the very beginning the first War Labor Board promoted the shop committee at every opportunity, except where the trade union had already gained a foothold. It is not altogether clear whether the Board considered the shop committee to be a *form* of collective bargaining or whether it used the shop committee as a *substitute* for collective bargaining in cases where the union was not already established. However that may be, it succeeded in making the shop committee a real factor in the handling of labor matters in a large number of concerns. The courts did not pass upon the legality of the government's recognition of collective bargaining and at most it represents what one administration was willing to do for the trade union in a time of great emergency. It is interesting that another Democratic administration was faced with a similar problem in an equally great emergency.

Another action that has some bearing upon the legal status of collective bargaining was the inclusion of the following provision in the Railway Labor Act of 1926:<sup>13</sup>

"Representatives, for the purpose of this Act, shall be designated by the respective parties in such manner as may be provided in their corporate organization or unincorporated association, or by other means of collective action, without interference, influence, or coercion exercised by either party over the self-organization or designation of representatives by the other."

The right of employees to freedom of action in the choice of representatives for dealing with employers was apparently established by this provision, and an important interpretative decision concerning it was rendered by the United States Supreme Court in 1930. For a number of years the Brotherhood of Railway Clerks had represented the clerks of the Texas and New Orleans Railroad. In 1925 it asked for wage increases, whereupon the Railroad proceeded to organize a company union and in other ways sought to undermine the Brotherhood. Representatives of the independent union lost their passes and some of them their jobs. Employees were hired to organize the company union and to embarrass the Brotherhood. The upshot was that the Brotherhood sought an injunction on the basis of the above-quoted provision in the Railway Labor Act which established the right of employees to freedom in the choice of representatives for dealing with employers. The court granted the desired injunction restraining the

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<sup>13</sup> Railway Labor Act, May 20, 1926, Section 2, paragraph 3.



company from interfering with the union or the clerks in their right of self-organization.

The case was finally carried to the Supreme Court, which on May 26, 1930, upheld the lower courts in a unanimous decision. In rendering its decision the Supreme Court placed its stamp of approval upon collective bargaining in the railroad industry, declaring that "the legality of collective action on the part of employees in order to safeguard their proper interest is not to be disputed. It has long been recognized that employees are entitled to organize for the purpose of securing the redress of grievances and to promote agreements with employers relating to rates of pay and conditions of work. . . . Congress was not required to ignore this right of the employee but could safeguard it and seek to make their appropriate collective action an instrument of peace rather than of strife. Such collective action would be a mockery if representation were made futile by interferences with freedom of choice."<sup>14</sup>

It must be kept in mind that this decision did not cover collective bargaining in all industries. The Act of 1926 was based upon the constitutional right of the federal government to regulate commerce. The Supreme Court has always regarded interstate commerce as being of the greatest importance and has been quite liberal in permitting the federal government to deprive persons of their property, in apparent violation of the fifth amendment to the constitution, in order to regulate it. Nevertheless, the decision was a genuine victory for organized labor in its attempt to establish its right to bargain collectively. In addition to the general matter of collective bargaining, the Supreme Court declared itself concerning other matters that vitally affect labor organizations. These pronouncements we shall have occasion to refer to later in our discussion of other union activities.

It may be gathered from all this that in the United States the legal status of the union can only be described as having been in a good deal of a muddle. In England the union has finally won a clearly recognized legal status, although it has had a stormy time achieving it. But on this side of the water, at least until 1935, it was prevented by the numerous and not altogether consistent decisions of the courts from having any clear idea of where it stood.

A word should be said concerning the legal status of trade agreements, which are the fruitage of collective bargaining. The trade agreement has usually come before the courts as the result of suits brought by individual

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<sup>14</sup> *Texas and New Orleans Railroad Company v. Brotherhood of Railway and Steamship Clerks*, 281 U. S. 548 (1930).

workmen who contend that they accepted employment under the assumption that they were covered by an unexpired trade agreement. The generally accepted view is that "where employers have concluded trade agreements, the terms thereof are understood to be incorporated in every contract which they make with workmen of the class covered, unless expressly negated."<sup>15</sup>

Originally the trade agreement was mainly regarded as a mere usage, but in recent years the tendency has been to treat it as a contract. It is true that neither party has been very successful in obtaining damages for breaches of trade agreements, but in numerous instances injunctions compelling observance have been granted.<sup>16</sup> The trade unions have not been nearly so vigorous in demanding legal recognition of the trade agreement as they have in their fight for legal recognition of collective bargaining. They have not been so sure that it would be an unmixed blessing. If trade agreements are to be regarded as contracts, it is almost inevitable that the courts will examine their provisions more carefully. Were the agreements obtained under duress? Are they consistent with public policy? These and similar questions the courts would undoubtedly raise and attempt to answer. In other words, the courts would take a more active part in the control of industrial relations, and in view of their past experiences the trade unions are not sure that they desire this.

### (b) *Early New Deal Legislation*

Since 1932 the legal status of collective bargaining has changed tremendously. Collective bargaining is now an institution accepted by a large proportion of American industrial plants and its exact nature clarified, at least in part, by the decisions of the National Labor Relations Board in carrying out the mandate of Congress in the National Labor Relations Act.

The move toward this new place of collective bargaining in labor relations started, of course, with the Railroad Labor Act of 1926, as described in the previous section. It will be remembered that this act provided definitely for collective bargaining through representatives selected by the employees. The Emergency Transportation Act of 1933 forbade payment of expenses of company unions and the amendment to the Railway Labor Act in 1934 clarified the regulations governing the handling of labor matters on the railroads. For example, these 1934 amendments provided for the election of representatives without coercion and allowed

<sup>15</sup> Edwin E. Witte, *The Government in Labor Disputes* (McGraw-Hill, 1932), p. 15.

<sup>16</sup> *Ibid.*

the selection of a union representative whether or not he was an employee of the carrier. Furthermore, the employees were given the right to organize and bargain collectively with representatives of their own choosing without any abrogation of that right on the part of the company.

The Railway Labor Act as amended was the most favorable piece of legislation concerning collective bargaining that had at that time been written on the statute books in the interest of organized labor. Not only was the trade union recognized but also real obstacles were placed in the organization of company unions or employee-representation plans.

The next step in the development of legislation protecting the rights of labor to collective bargaining was the passage in 1933 of the National Industrial Recovery Act with its famous Section 7(a). Clauses (1) and (2) of this section provided: (a) "Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing."

In carrying out the provisions of this Act the first real friction occurred when hearings were being held on the proposed code for the iron and steel industry. The law required that all codes should contain clauses (1) and (2) of Section 7(a). In the code originally proposed by the Iron and Steel Institute (the employers' association) these clauses were included but an interpretation was added. To the steel industry collective bargaining meant employee representation. This interpretation was, of course, not acceptable to organized labor and the labor representatives protested vigorously. The government administrator held that such an interpretation would unduly qualify the language of the law and should be dropped, and the employer representatives finally agreed to this. The fact that they made the concession did not mean, however, that they were willing to accept trade unionism. They continued to foster employee representation and vigorously opposed any attempt to introduce trade unionism.

The automobile manufacturing industry was the only industry that succeeded in incorporating in an approved code any interpretation of Section 7(a). The famous "merit clause" was included in the code as ap-

proved on August 26, 1933. It came after the required items (1) and (2) and read as follows:

"Without in any way attempting to qualify or modify, by interpretation, the foregoing requirements of the National Industrial Recovery Act, employers in this industry may exercise their right to select, retain, or advance employees on the basis of individual merit, without regard to their membership or non-membership in any organization."

The inclusion of this interpretation in the automobile code with the approval of government officials brought a great wave of protest from organized labor. Labor charged that this was a deliberate attempt to nullify the collective bargaining features of the act, that it was simply a case of the government giving in to a strong anti-union industry. Although these protests were futile so far as this particular clause was concerned, apparently they were successful in preventing further interpretations of clauses (1) and (2). At least no other interpretations were allowed.

Another knotty problem, which presented itself almost immediately in the administration of Section 7(a), was that of finding out what kind of representation the employees really wanted. Largely as a result of the protest following the inclusion of the merit clause in the automobile code, a statement was issued by the administrator which said, among other things, that "if there is any dispute in a particular case over who are the representatives of the employees' own choosing, the N. R. A. will offer its services to conduct an impartial investigation and, if necessary, a secret ballot to settle the question." The agency which performed this function in the beginning was the now defunct National Labor Board. This Board was composed at first of three employer representatives, three employee representatives, and an impartial chairman, Senator Wagner of New York. A number of elections were held under the auspices of the Board but the results were not accepted in every case. For example, in the coal mines of Western Pennsylvania owned by several large steel companies the miners voted in most cases for the United Mine Workers' Union, but the steel companies refused to recognize the union and stood firm despite the efforts of the Labor Board.

Probably the most spectacular opposition to the National Labor Board came from the Weirton Steel Company. The Amalgamated Association of Iron, Steel, and Tin Workers charged that this company was fostering a company union and was about to conduct an election in which the employees would be coerced. The Board directed that its approved methods be used in conducting the election and that the election be postponed, but the company defied the Board and proceeded with the election. An over-

whelming vote in favor of the company union was polled and the company union was continued. After a number of ineffective protests on the part of the Board, the case was finally placed in the hands of the Department of Justice for prosecution. Before a final decision was had, the N. I. R. A. had itself been declared unconstitutional.

Another interesting point in connection with the meaning of collective bargaining was raised when the officials of the Ford plant at Edgewater, New Jersey, "bargained collectively" with the employees. The workers charged that the officials met reluctantly with a committee of workers but turned down flatly every request that was made. Is it collective bargaining to meet with a group of employees, hear what they have to say, and do nothing about it? If so, collective bargaining is quite meaningless from the workers' standpoint. The same point was raised in other instances and on November 6, 1934, in the case of the Atlanta Hosiery Mills and the American Federation of Hosiery Workers, Local 76, the Old National Labor Relations Board (successor to the National Labor Board) stated unequivocally that although the employer was not required to acquiesce in particular demands, Section 7(a) did require that he "enter into negotiations with a sincere desire to reach agreement," and that union demands, if acceptable to the employer, should be embodied in an agreement.

Probably the most controversial point raised concerning the meaning of Section 7(a) was whether the right to choose representatives for collective bargaining signified that the representatives chosen by the majority were vested with the right to represent all the workers. This came to be known as the principle of majority rule, and the problems concerning the principle occupied a great deal of the time of the various labor boards which were operating under the provisions of the N. I. R. A.

In June, 1934, the National Labor Relations Board (now called the Old National Labor Relations Board) of three was set up to replace the eight-man National Labor Board. Following a number of relatively minor decisions, on August 30 the Board announced with vigor in the Houde Engineering case that majority rule was the only correct interpretation. An election had been conducted by the Regional Labor Board in March, 1934, at which the United Automobile Workers received 1105 votes and the Employers' Association 647; whereupon the company began to deal with both organizations. The union complained of this practice to the National Labor Relations Board and the Board declared that the Houde Corporation had violated Section 7(a). The ground for this ruling was that "bargaining" with both majority and minority groups was not real

collective bargaining; the actions of the Corporation in dealing first with one and then with the other "resulted, whether intentionally or not, in defeating the object of the statute."<sup>17</sup> The Board further declared that if the Houde Corporation did not comply with the terms of the decision within a stipulated time, the case would be turned over to the law-enforcing agencies. The period of grace elapsed, the Corporation refused to comply, and the case was turned over to the Department of Justice. For two months the Attorney General of the United States refused to prosecute on the ground that there was insufficient evidence to warrant bringing action. Finally he announced that he would carry the case to the courts, but again the case was dropped when the Supreme Court invalidated N. I. R. A. itself.

The disagreement over Section 7(a) is rather forcibly brought out by the fact that of the 4277 cases of labor disputes handled by the National Labor Board, 2744 cases (64 per cent of the total) resulted from alleged violation of Section 7(a).<sup>18</sup> Out of these difficulties and experiences, however, developed many parts of the National Labor Relations Act which had been introduced into Congress in an attempt to put teeth into federal labor policy.

#### THE NATIONAL LABOR RELATIONS ACT

In 1935 with the passage of the National Labor Relations Act, collective bargaining ceased to be a vague right that labor might have if labor were strong enough to force the employer to grant it. Collective bargaining became a right that could be protected by government. The act, also called the Wagner Act after its senatorial sponsor, provides that collective bargaining shall be the method of labor relations if the majority of workers in a plant desire that process. To further that public policy, the law prohibits certain unfair labor practices and establishes a board responsible for the enforcement of these prohibitions. Finally, the Wagner Act establishes procedure for determining by election the representatives of the workers if collective bargaining is chosen by the majority. Previous new deal labor boards had mediated and arbitrated, as well as attempted to foster collective bargaining. The National Labor Relations Board, to be sure, does settle disputes arising in connection with the law the board administers. The present board differs from its predecessors, however, in

<sup>17</sup> *American Federationist*, 41:1102 (Oct., 1934).

<sup>18</sup> U. S. Bureau of Labor Statistics, *Labor Information Bulletin*, 1:1-2 (Sept., 1934). This means clauses (1) and (2) of the Section.

that protecting the collective bargaining rights of the workers is its primary function and any other activities are incidental to that function.

Congressional policy as stated in the preamble of the act is that labor relations, if the workers so wish, should be conducted through the orderly channels of collective bargaining in order to reduce the number of industrial disputes which interfere with interstate commerce. This affirmation is made effective by five prohibitions upon employer activity. No employer (1) may interfere with his employees' rights of collective bargaining; (2) dominate or interfere with the formation or administration of any labor organization by financial or other support; (3) discriminate in regard to hire, tenure or condition of employment to encourage or discourage membership in any labor organization except that a closed shop agreement is permissible; (4) discharge or otherwise discriminate against an employee for filing charges or testifying under the act; (5) refuse to bargain collectively.

In the selection of representatives the principle of majority rule is followed with the Board having full authority to determine what is called the appropriate unit for bargaining. In the event there is any controversy over the selection of representatives, the Board must investigate and certify the proper representatives.

The three-man non-partisan Labor Relations Board is the agency charged with the enforcement of the act as well as with the supervision of the selection of representatives. When a complaint is brought, the Board must investigate the facts, hear evidence, and issue its findings of fact. On the basis of these findings the Board either dismisses the case or orders the firm complained of to cease and desist. An order for reinstatement with back pay often accompanies a cease and desist decree.

Recourse to the circuit courts of appeal is open both to the agency and to the company aggrieved by the Board's order, and there is, of course, the right of appeal to the Supreme Court.

No penalties are provided for violations of the several sections of the act, although fine or imprisonment, or both, are possible for those who willfully interfere with the Board or the agents in the performance of their duties.

As with any such far-reaching legislation, grave doubts were at an early date expressed as to the constitutionality of the law. Many employers, assured by their lawyers that the law was unconstitutional, did not try to meet the requirements of the act. All such doubts were dispelled when the Supreme Court issued its "Labor Board Decisions" on April 12, 1937. The Court decided five labor board cases on that date, the most important

of which was the Jones and Laughlin Steel Company Case.<sup>19</sup> The reasoning in the other cases stemmed from this primary decision.

In the Jones and Laughlin decision the Court held that employer interference with the rights of collective bargaining was a "proper subject for condemnation by competent legislative authority." If interstate commerce were involved Congress was certainly that competent legislative authority. The Court then returned to earlier interpretations of interstate commerce and held that the fact that production was involved rather than the shipment of goods did not constitute a reason for ignoring the effect on interstate commerce of work-stoppages in production. "We are asked," the Court said, "to shut our eyes to the plainest facts of our natural life and deal with question of direct and indirect effect in an intellectual vacuum." This the Court refused to do and therefore upheld the Labor Relations Act as proper regulation by Congress of interstate commerce. Furthermore the Court found nothing in the law that violated the due process clause of the constitution.

These five cases were not the only ones brought to the Supreme Court, but later cases merely questioned the Board's power, its findings of fact, or its procedures. The Act providing for the protection of the rights of collective bargaining became significant on April 12, 1937.

It will be recalled that the section of the act prohibiting unfair labor practices contained five such proscriptions, but one of the items listed is in reality a blanket or omnibus clause, for it declares interference with the right to bargain collectively is an unfair labor practice. In carrying out the provisions of the law the Board has held that various well-known practices of employers constitute interference and are therefore as much unfair labor practices as the four practices specifically mentioned in subsequent subsections of the law.

No longer, for example, can labor espionage be used without fear of the law. In most cases involving labor spies there has been a subsequent discharge for union activity, but in more than one case the spying itself has been declared to be an unfair labor practice. Bribery of workers or leaders can no longer be practiced with impunity. The Board has held that such actions violate the proscription against interference with bargaining. More subtle and therefore harder to find and rule against is the use by employers of the weapon of propaganda to interfere with labor's rights. Employers have been told to cease and desist in their program of discrediting the union and the union leaders by spreading false rumors. They have been ordered to stop bluffing when they have threatened to move

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<sup>19</sup> 301 U. S. 1 (1937).



their plants or go out of business if the union came in. Likewise companies have been ordered to cease using business men and municipal authority to spread propaganda and prevent union activity.

From time to time the Board has stopped various other unfair labor practices. They have checked employers who have incited to violence or have tried by individual dealing or economic pressure to keep out a union, or have hired professional strike breakers. Truly ingenious have been the methods devised by employers to get around the provisions of the law. The Board, however, has likewise been ingenious in ferreting out these practices, with the result that there are now clear-cut lines of action which an employer must follow if he is to stay within the law.

The other four proscriptions in the law have required less interpretation than that prohibiting interference with the right of collective bargaining. Despite the many novel innovations in labor relations, the Board has been able to tell when a company was dominating or attempting to dominate an organization of its employees. The Board in each case attempts to find out whether in fact there has been any domination, and, if there has been, the order requires the dissolution of the dominated union together with a notice placed in the plant to the effect that such dissolution has taken place.

The most frequent charge is that a company is disobeying the law by discriminating against a worker because of membership in a labor union. Sometimes discrimination is obvious, but often it is difficult to tell whether a bus driver has been discharged for denting a fender or joining the union. Under such circumstances the Board has had to consider the whole background of labor relations in the plant. If denting a fender has generally been a reason for discharge, the Board would likely hold that no discrimination had been shown. If fender denting had been previously considered a hazard of bus driving and only during an organization drive been considered a cause for discharge, the Board would probably hold that the coincident of union membership and discharge was too close and order the reinstatement of the worker. Between cases of obvious discrimination and cases where a worker has obviously tried to hide inefficiency or insubordination behind a charge of discrimination, the Board has had to decide guilt or innocence in each case.

Very few cases have been brought charging that an employer has retaliated against a worker for testifying or bringing a charge against this employer. More difficult to interpret has been the last of the forbidden practices, that of refusing to bargain collectively. Considering that not so many years ago the meaning of collective bargaining was the issue over

which President Wilson's conference on industrial relations foundered, it is not remarkable that the enforcement of this section of the law has given rise to many difficult and irritating problems. The Board has had to determine in innumerable cases whether an employer was really trying to bargain or was merely going through the motions. Out of the Board's decisions has developed a more adequate concept of the meaning of bargaining. No longer can it be called bargaining when an employer merely sits and listens. If he is bargaining he must make reasonable counter suggestions. Bargaining, the Board has said, must be with the chosen representatives of the workers, whether or not the employer likes the selection. Furthermore, an employer has not bargained if he has reached an agreement with his workers and then refuses to put that agreement in writing. There is nothing in the law that requires an agreement to be reached, but the Board is required to bend every effort toward seeing that management tries to reach some orderly settlement with labor. Study of the Board's decisions on this section of the law gives a clear picture of what it means to bargain collectively.

One of the most difficult problems faced by the Labor Relations Board has been with reference to the determination of the appropriate bargaining unit. Although the role of umpire is never a happy one, the Board is by law given the task of deciding whether in a particular case the unit shall be "the employer unit, craft unit, plant unit, or subdivision thereof." To make decisions of this nature would have been difficult even considering the ordinary jurisdictional disputes between unions. Making such decisions in view of the bitter rivalry between the A. F. of L. and the C.I.O. has led to constant criticisms of the Board by some groups of organized labor.

In seeking to answer the question in individual cases, the Labor Board has developed certain criteria for determination. In the first place, the Board tries to follow the wishes of the employees, but the Board must hold constantly in mind that its function as stated in the law is to effectuate the policies of the Act. If, therefore, the wishes of the employees would require the setting up of five or six separate unions in a small plant, the Board might well decide that such a breakdown of units would not "effectuate the policies of this Act," and might therefore set up one industrial union. Probably such a decision would incite the wrath of the A. F. of L. affiliated unions. Nevertheless, each individual case is handled on its merits after the Board has studied the history of bargaining in the plant as well as all other pertinent facts.

The National Labor Relations Act and the National Labor Relations Board have been the center of vitriolic criticism, the like of which has

seldom been heaped upon any Congressional act or administrative board. The critics first declared that the Act was unconstitutional. This matter having been settled by action of the Supreme Court, the cry arose that the principle was right but the law must be equalized. Numerous emasculating amendments flooded Congress and hearings were held, but to no avail. Enemies of the act then changed their tactics. The Act, they said, was right in principle but the Board must be changed. With this in mind a Congressional committee was authorized to investigate the Board. Three members of this committee brought in a report castigating the Board for some of its shortcomings. The membership of the Board has recently changed, some of its methods have been modified, but the Board itself continues to administer the original law in practically the same way that it has since 1935.

The success of any institution must be judged by how it accomplishes its aims and program. The preamble of the Labor Relations Act speaks of lessening the loss to interstate commerce caused by strikes. Whether the operation of the Act has lessened strikes is a debatable point, chiefly because strike statistics are far from accurate and it is hard to tell whether the Act or something else increased or decreased the number of strikes. One student of the operation of the law says that probably the Act has given rise to some strikes and checked others.<sup>20</sup> What the future will hold is, to be sure, problematical, but in so far as the Act strengthens union organization, it is hardly reasonable to suppose that strikes will greatly lessen. To the extent that strikes in the past have been caused by the arbitrary refusal on the part of employers to bargain with the unions or to the attempts to forestall organization, the Wagner Act has undoubtedly reduced labor strife. To the extent, however, that strikes arise from other causes, there is nothing in the Act to stop them. The strikes may be less bitter and less costly, but when collective bargaining breaks down, only a test of strength is available to the bargainers. The strike is a last resort in all collective bargaining transactions.

But the use of the orderly procedure of collective bargaining is another purpose of the Act, as can be seen not only in the preamble but in many sections of the law itself. The rights of workers to organize and bargain collectively through representatives of their own choosing without interference has been accomplished. Individual bargains have given way to the trade agreement. In this respect no one can doubt the effectiveness of the Act and the Board which has administered it. The Board has

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<sup>20</sup> D. O. Bowman, *Public Control of Labor Relations* (Macmillan, 1942), '33.

made errors in judgment and in procedure, but as Dr. Bowman has said, "A positive, active, and objective spirit guiding the adjustment of private rights to public interests under our existing legal and economic institutions was the major contribution of the Board."<sup>21</sup> The Act itself has given to labor a protected right, whereas until the passage of the law, labor had a right only if they were strong enough to obtain it and hold it.

The National Labor Relations Act has now been the law of the land for more than ten years. During that first ten years, 77,250 cases were filed with the Board. Of these, 37,300 involved cases in which an unfair labor practice was charged. The other 39,950 cases involved selection by the workers of the bargaining agency. Most of the cases were disposed of informally, that is, without the necessity for hearing, orders, or court litigation, and over 90 per cent of the 37,300 cases involving unfair labor practices were handled in this manner. To correct unfair labor practices, the Board issued 2600 formal decisions, ordering the reinstatement of some 300,000 employees, 30,000 of whom received back pay totaling about nine million dollars. More than 2000 company unions were ordered disestablished.

In the courts the Board has been unusually successful in having its decisions upheld. During the first ten years, more than 600 of the Board's cases have been litigated. In the Circuit Court of Appeals, 343 of these cases were upheld in full, 78 were set aside, and 167 were modified. The Supreme Court upheld the Board's orders in 53 of the 55 cases that reached it. The former general counsel for the Board, Mr. Charles Fahy, has summarized the court action as follows: "In those decisions, the courts gave the Act a living interpretation, based upon an awareness of the realities of the relationship between management and labor, of the degree of protection which is required to make employee self organization a possibility, and of the nature of the collective bargaining process as developed in this country and encouraged in the Act."<sup>22</sup>

#### THE NATIONAL DEFENSE AND THE WAR PERIODS

The right of labor to bargain collectively was guaranteed by the National Labor Relations Act approximately six years before the outbreak of World War II. During that period the federal, state, and local governments gave full recognition to the status of labor unions, consulting their leaders as to wages and working conditions, and "on the broad social

<sup>21</sup> *Ibid.*, p. 485.

<sup>22</sup> Louis G. Silverberg, Editor, "The Wagner Act: After Ten Years" (Bureau of National Affairs, 1945), p. 60.

problems of our national life.”<sup>23</sup> Such recognition carried with it, even in peacetime, the implication of certain responsibilities, among which the Secretary of Labor listed (1) excessive picketing, (2) work stoppages due to jurisdictional disputes, (3) boycotting of goods which members of another union have produced, (4) the “raiding” of membership of one union by another.<sup>24</sup>

But certain larger responsibilities fell to both labor and management with the coming of the war. It was apparent from previous years of experience that differences between the two parties would not cease to exist, even though both recognized the dangers of work stoppages during wartime. Labor and management were not expected, therefore, to ignore these points of disagreement. They were instead charged with the responsibility for the duration of the war of settling all disputes peaceably without slowing up production. Labor agreed not to strike, and both parties pledged full cooperation in all matters pertaining to war production. To aid further in settling disputes quickly and to prevent work stoppages the national government, in addition to its Conciliation Service, created the National Defense Mediation Board, which was later replaced by the National War Labor Board.

These new boards in no way displaced the National Labor Relations Board which continues to protect the rights of workers to organize and bargain collectively.

The National Defense Mediation Board, created by Executive Order on March 19, 1941, consisted of eleven members: three representatives of the public, four representatives of employers, and four representatives of employees. The jurisdiction of the Board covered those controversies which “threaten to burden or obstruct the production or transportation of equipment or materials essential to national defense,” exclusive of disputes which were under the jurisdiction of the Railway Labor Act.

Cases were certified to the Board by the Secretary of Labor after the Conciliation Service had failed to effect agreements between the parties. The Board was then charged with the duty of making every reasonable effort to settle any dispute by assisting the parties to negotiate agreements, helping them select arbitrators, holding hearings and formulating recommendations which might be made public.<sup>25</sup> Cases were usually heard by a

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<sup>23</sup> Frances Perkins, “Trade-Unionism as an American Institution,” *Labor Information Bulletin*, U. S. Bureau of Labor Statistics, vol. 9, No. 2, p. 1 (Feb., 1942).

<sup>24</sup> *Ibid.*, p. 2.

<sup>25</sup> Kaltenborn, Howard S., *Governmental Adjustment of Labor Disputes*, Chicago (The Foundation Press, 1943), p. 85.

panel of three members, the labor member being an A. F. of L. representative in cases involving that federation, and a C.I.O. representative when one of its affiliates was involved. If both the A. F. of L. and the C.I.O. were involved, a member representing each union, two industry members, and one public member served.

From March 19, 1941, to January 12, 1942, when it was replaced by the National War Labor Board, the Mediation Board received 114 cases through the Secretary of Labor, and four other cases arose from a division of certified disputes into more than one case. Before the outbreak of the war on December 7, the Board had attempted mediation in at least 44 cases; its efforts were successful in 19, or 43 per cent of the cases undertaken.<sup>26</sup> The percentage of failures seems very high, but it must be remembered that these cases were certified to the Mediation Board only after they had proved to be too difficult to be settled by the Conciliation Service. In 64 of the 118 cases, strikes had occurred before the case was certified to the Board, and 24 additional work stoppages occurred after cases came under the Board's jurisdiction.<sup>27</sup>

In more than twenty cases the Board, not being able to settle the dispute through mediation, made public recommendations; in thirteen of these cases one of the parties refused to abide by the recommendations.<sup>28</sup> In the Captive Coal Mines Case, the Mediation Board voted 9 to 2 to reject the United Mine Workers' demand for a union shop. Philip Murray, C.I.O. president, and Thomas Kennedy, C.I.O. member, who had voted in favor of approving the union shop, resigned from the Board, and John L. Lewis, president of the United Mine Workers, refused to abide by the Board's decision. President Roosevelt then appointed an arbitration panel composed of John R. Steelman, Director of the Conciliation Service, Benjamin Fairless, President of United States Steel Corporation, and John L. Lewis. The panel voted 2 to 1 in favor of granting the union shop.

Although this particular dispute was settled, the refusal of the union to accept the Board's decision and the resignation of the C.I.O. members from the Board greatly impaired its effectiveness. On December 17, 1941,

<sup>26</sup> *Ibid.*, pp. 88-89.

<sup>27</sup> For a detailed discussion of the work of the Mediation Board see Louis L. Jaffe and William Gorham Rice, Jr., *Report on the Work of the National Defense Mediation Board from Its Establishment, March 19, 1941, to the Outbreak of War, Dec. 7, 1941* (Mimeographed copy, released by the National Defense Mediation Board); and Howard S. Kaltenborn, *Governmental Adjustment of Labor Disputes*, Chicago (The Foundation Press, 1943), pp. 84-111.

<sup>28</sup> These cases consisted of four employer refusals and nine employee refusals, *Ibid.*, p. 93.

the President called a labor-industry conference, out of which developed the National War Labor Board, replacing the weakened Mediation Board.

At the labor-management conference which met December 17, 1941, after the declaration of war, the parties agreed that there would be no strikes or lockouts for the duration of the war, and that a national board should be established for the purpose of handling disputes. Accordingly, on January 12, 1942, by Executive Order No. 9017, the President created the National War Labor Board to settle all disputes "which might interrupt work which contributes to the effective prosecution of the war."<sup>29</sup> The Board continued to have jurisdiction over only dispute cases until October 3 of the same year, when the President issued Executive Order No. 9250 to carry out the provisions of the Anti-Inflation Act of October 2. Under this order the additional task of stabilizing wages in all industries became a part of the Board's activities.

The National Board was composed of four public, four industry, and four labor representatives and an appropriate number of alternates for each group, all appointed by the President. In addition to the National Board, twelve Regional Boards were established to aid in handling the increased volume of work incurred as a result of the Board's wage stabilization duties, and each Board was given the authority to render final decisions in both voluntary wage cases and dispute cases. The National Board issued policy directives, handled cases appealed from the decisions of Regional Boards, and had jurisdiction over any cases which it considered especially significant.

Tripartite commissions were also established for a number of industries such as shipbuilding, lumber, trucking, non-ferrous metals, tool and die industries, and newspaper printing and publishing. These commissions, like the Regional Boards, rendered decisions on cases within their jurisdiction, subject to review by the National Board.

The procedure for handling cases was as follows: (A) *Dispute cases* which could not be settled either through the usual collective bargaining procedures or with the aid of the United States Conciliation Service, were certified to the Board by the Secretary of Labor. The Board also took cases on its own motion, with the permission of the Secretary. If the case was of "national significance," it was handled in the national office; otherwise the Board forwarded it to the appropriate commission or regional

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<sup>29</sup> *Summary of Decisions of the National War Labor Board*, I, Washington, Jan. 12, 1942, to Feb. 15, 1943, p. 1.

board, where either a tripartite board or a single hearing officer heard the case. The panel on the hearing officer merely made recommendations to the Regional Board. (B) Voluntary requests for wage adjustments were filed by the employer if there was no labor union, or by the employer and the union, with the local Wage-Hour office, which forwarded the case to the regional Board if Board action was required. In either type of case either party could appeal the decision of the regional board or the commission to the National War Labor Board for final decision.

During the first three years of activity of the National War Labor Board, it closed approximately 362,000 voluntary and dispute cases which involved a total of about 24,000,000 employees, and hundreds of thousands of employers. Of the 14,000 dispute cases which were received, 31 had to be referred to the President because one of the parties refused to abide by the Board's decision. In 25 of these cases it became necessary for the President, under the terms of the Smith-Connally Act,<sup>30</sup> to seize the plants.<sup>31</sup>

The Smith-Connally Act, or War Labor Disputes Act, of June 25, 1943, provided that employees in dispute with a war contractor should notify the Secretary of Labor, the National Labor Relations Board, and the National War Labor Board of the dispute and the issues involved. For thirty days after such notice was given, the plant continued operation under the existing conditions. If the dispute had not been settled at the end of thirty days, the National Labor Relations Board was directed to take a strike vote, before the President took action.

The Act gave the President the power to take over and operate any plants, mines, and facilities in which there was an actual or threatened work stoppage which would impede the war effort. The plants thus seized were to be operated under the terms of employment in effect at the time of the seizure, but the employers might apply to the National War Labor Board for wage increases or changes in employment conditions.<sup>32</sup>

Although it attempted to settle each case on its merits the Board naturally developed a number of principles during its almost four years of work. In attempting for example to reach a compromise on the closed shop question, the Board instigated the maintenance of membership clause,

<sup>30</sup> Public Law 89, Ch. 144, 78th Cong., 1st Sess.

<sup>31</sup> Third Anniversary Report, *National War Labor Board Press Release B-1918*, Jan. 15, 1945.

<sup>32</sup> *Monthly Labor Review*, vol. 57, Aug., 1943, pp. 305-307.



which is discussed more fully in another chapter. Likewise the Board constantly urged employers and unions to adopt binding arbitration procedures as a final measure for settling grievances, and ordered many companies to install adequate procedures for the prompt, just, and final settlement of the day-to-day grievances involving the interpretation and application of the contract. Often in an individual dispute the Board directed the parties to select an arbitrator whose decision finally settled the grievance.

The Board developed certain general policies in ruling on controversial issues, one of the most noted of which was that of ordering "equal pay for equal work," despite differences in sex or color. In one case, employers were directed to abolish job classifications based solely on race, and Dr. Frank P. Graham, public member of the Board, stated: "The Negro workers in this classification are hereby granted wage increases which place them on a basis of economic parity with the white workers in the same classification. This wage increase is made without regard to the Little Steel Formula but with regard simply for the democratic formula of equal pay for equal work in quantity and quality in the same classification. . . ." <sup>33</sup>

A fourth policy was that of urging collective bargaining relations between employers and employees, and of upholding the provisions of agreements between the two parties. Details of the contracts were to be agreed upon through collective bargaining, as long as the agreement reached was in accordance with the general orders and previous decisions of the Board. When the parties were unable to agree on terms, the Board itself often wrote the agreement.

A fifth development occurred in connection with paid vacations. The Regional Boards were given authority to approve (or order) vacation plans which conformed to the general practice in the area or which were in line with the standard board policy of granting one week's paid vacation after one year's service, and two weeks' vacation after five years' service. The Board pointed out that paid vacations were coming to be generally acceptable to industry and that reasonable vacations were especially important during wartime.

A study of the activities and decisions of the War Labor Board leads to the conclusion that under the guise of a dispute unions brought many demands to the Board which in the normal course of collective bargaining might never even have been asked. In granting some of these demands the Board settled the immediate dispute but it is probable that now the war

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<sup>33</sup> Southport Petroleum Company Case, XII, *L.R.R.*, June 16, 1943, p. 556.

has ended, concessions granted to the unions by force will be difficult to maintain. Employers, for example, who have been forced by the Board to grant maintenance of membership, paid vacations, shift premiums, etc., will be reluctant to continue such practices unless experience has shown them to be good personnel practices.

With the end of the Second World War the War Labor Board began immediately to wind up its affairs. Whether peacetime experiments with such compulsory arbitration will be continued remains to be seen. At this writing (spring of 1946) it seems that American labor and industry are returning to collective bargaining as practiced prior to the war.

## CHAPTER XVI

### THE STATE AND THE INDUSTRIAL CONFLICT

(*Continued*)

#### RIGHTS OF UNIONS

EQUALLY important with the legal status of the union itself is that of the group of activities which it regards as indispensable to its proper functioning. A union must have the power to carry on certain activities if it is to amount to anything. Particularly is this true of the strike. Deprived of its right to strike the union would be practically helpless as a bargaining agency. And the union believes that picketing is necessary to the prosecution of a strike. Then there is the boycott, which, although it has never been extensively used by English trade unions, and although its importance in this country is diminishing, has given a good account of itself in many American labor struggles. At any rate the union is much concerned to obtain legal recognition for all of these various activities; and naturally so, for the right of workmen to organize is meaningless unless buttressed by the right to pursue those activities which are necessary to accomplish the purposes for which they brought their organization into being.

We have seen that the legal status of the trade union has not been clearly established. The actual right to organize for the purpose of collective bargaining seems to stand unquestioned, and it is a right now protected by law. To be sure, when a union clashes with the rights of other parties or uses means that in themselves, as they are practiced, are not legal, the rights to organize may not be freely utilized. Today the union operating under the Labor Relations Act may merely exercise its right to organize and bargain collectively. Its legal rights to make its organization effective is not at all clear.

#### (a) *The Strike*

The strike, of course, stands at the head of any list of union activities. There seems to be no question but that an individual has the legal right to quit work, and there also seems to be virtual agreement among the courts that on the whole men have the right to strike. Yet it is a well-

known fact that many strikes have been declared illegal. As the Supreme Court of Massachusetts has said: "There is no question of the general right of a labor-union to strike. On the other hand it is settled that some strikes by labor unions are illegal."

The reason for this apparent inconsistency lies in the inability of the courts to agree upon what constitutes a strike. Probably what a court means when it says that the workers have a general right to strike is that since an individual has the right to quit work, a group of individuals has the same right. But a strike is something more than the mere quitting of work by a group of individuals. It comprises a number of different acts. An agreement must be reached by the workers. Demands are made upon the employer. Finally an ultimatum is issued. The men function in concert even after they have quit work. Hence the element of combination and perhaps of conspiracy enters into the strike and renders it liable to the charge of illegality.

In general it may be said that the courts will hold a strike legal if they approve its purpose. As we found in considering the doctrine of conspiracy the principle that seems to have been established by the courts is that a strike must have for its purpose the benefiting of its members and not the injuring of the employer. The general principle has been well stated by the Supreme Court of Massachusetts: "Whether the purpose for which a strike is instituted is or is not a legal justification for it, is a question of law to be decided by the court. To justify interference with the rights of others the strikers must in good faith strike for a purpose which the court decides to be a legal justification for such interference. . . . A strike is not a strike for a legal purpose because the strikers struck in good faith for a purpose which they thought was a sufficient justification for a strike."<sup>1</sup>

This doctrine has apparently been accepted in the majority of courts, although there is some dissent from the view that motive is the determining factor in establishing the legality of strikes. The Chief Judge of the New York Court of Appeals quoted the principle later expounded in the *De Minico* case and said: "It seems to me illogical and little short of absurd to say that the everyday acts of the business world, apparently within the domain of competition, may be either lawful or unlawful according to the motive of the actor."<sup>2</sup> California courts have also refused to accept the principle. The United States Supreme Court, however, has said: "A strike may be illegal because of its purpose, however orderly the manner in which it is conducted."<sup>3</sup>

<sup>1</sup> *De Minico v. Craig*, 207 Mass. 593 (1911).

<sup>2</sup> *National Protective Association v. Cumming*, 170 N. Y. 315 (1902).

<sup>3</sup> *Dorchy v. Kansas*, 272, U. S. 306 (1926).

What the whole matter boils down to is that in each case the courts decide whether the strike is legal or not. As the courts themselves have not been altogether clear, the unions are certainly far from clear as to the legality or illegality of the various acts which may go to make up the strike. However, the courts have made some progress in building up a body of law, and unless they reverse themselves considerably, the unions will in time have some legal guide to consult in the choosing of their activities.

It should be stated at the outset that the California courts have declared all strikes to be legal.<sup>4</sup> Massachusetts has gone farthest to the other extreme. Almost without exception the courts of that state have declared strikes for the purpose of discharging non-union workmen or members of rival unions to be illegal. Other kinds of strikes that have commonly been condemned by the courts of Massachusetts are sympathetic strikes and strikes to obtain the removal of objectionable foremen or the reinstatement of discharged employees. Also union members may not be coerced to participate, even in strikes that are lawful, by threats of fines or expulsion. The courts of other states, although they have not gone so far as the Massachusetts courts, have usually found some strikes illegal. Strikes against non-unionists have been held to be illegal in Connecticut, Vermont, and New Hampshire. The position taken by the New York courts is somewhat confused. They have condemned sympathetic strikes, and some of them have condemned strikes against the use of non-union material. They have been quite inconsistent in their attitude toward strikes for the closed shop.

The sit-down strike, so popular in 1937, is not illegal as a strike but as an unlawful seizure of property. In the *Fansteel Case* the Supreme Court roundly condemned the sit-down strike as "a high-handed proceeding without shadow of legal right." "The employees," continued the Court, "had the right to strike but they had no license to commit acts of violence or to seize their employer's plant."<sup>5</sup> In these comments the Court was addressing itself to the method of conducting the strike rather than to the issues involved. The sit-down strike has disappeared from the labor field. From a high of 170 in March, 1937, the number decreased to none in 1940.

After a consideration of the various cases having to do with the legality of strikes, Commons and Andrews in 1927 summarized their findings as follows: "Strikes solely and directly involving the rate of pay or the hours of labor are everywhere considered legal. Strikes to gain a closed shop,

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<sup>4</sup>For an excellent statement of the position of the California courts, see *Parkinson Co. v. Building Trades Council*, 154 Cal. 581 (1908).

<sup>5</sup>*National Labor Relations Board v. Fansteel Metallurgical Corporation*, 306 U. S. 240.

sympathetic strikes, and strikes against non-union material have been condemned in many jurisdictions. Only in California is it settled law that all strikes are legal."<sup>6</sup> This statement made in 1927 is true today.

During the Second World War, as during the first, organized labor pledged there would be no strikes and that disputes would be settled either through bargaining or by the National War Labor Board. Pledges by farsighted leaders were not always met by the workers in the plant and the man-hours lost through strikes were great. In an attempt to regulate wartime strikes Congress in 1943 passed the Smith-Connally Act designed in part to curb strikes by requiring a cooling-off period. Strikes continued despite this partial abrogation of the legal right.

### (b) *Picketing*

The legal status of picketing is also in doubt, although less so than that of the strike. Some states, Alabama, Colorado, and Washington, for example, have simplified matters by passing laws that prohibit all picketing. In 1921 two important decisions affecting picketing were rendered by the Supreme Court of the United States. In the *American Steel Foundries* case the Court unanimously held all "picketing" to be unlawful but also declared: "Each case must turn on its own circumstances. . . . We think that the strikers and their sympathizers engaged in the economic struggle should be limited to one representative for each point of ingress and egress in the plant or place of business, and that all others be enjoined from congregating or loitering at the plant or in the neighboring streets by which [*sic*] is had to the plant. . . . This is not laid down as a rigid rule but only as one which should apply to this case under the circumstances disclosed by the evidence, and which may be varied by the evidence. . . . The purpose should be to prevent the inevitable intimidation of the presence of groups of pickets, but to allow missionaries."<sup>7</sup> In considering the constitutionality of an Arizona statute (as interpreted by the Supreme Court of that state) which attempted to legalize mass picketing, the United States Supreme Court by a five to four decision held the statute to be unconstitutional.<sup>8</sup>

These are undoubtedly the two leading cases on picketing, and the majority of the states have attempted to follow them. In some cases the courts have allowed the precise number of pickets stipulated by the Supreme Court

<sup>6</sup> John R. Commons and John B. Andrews, *Principles of Labor Legislation* (Harpers, 1927), p. 115.

<sup>7</sup> *American Steel Foundries Co. v. Tri-City Trades Council*, 257 U. S. 184 (1921).

<sup>8</sup> *Truax v. Corrigan*, 257 U. S. 312 (1921).

in the American Foundries Case. In other cases they have followed the instruction of the Court not to take this as a rigid rule and have varied the number to fit the immediate circumstances. A later case decided in 1940 invalidated the Alabama law against picketing on the grounds that such a law interfered with the rights of free speech guaranteed by the Constitution. "In the circumstances of our time," said the Court, "the dissemination of information concerning the facts of a labor dispute must be regarded as within that area of free discussion that is guaranteed by the Constitution."<sup>9</sup> Apparently laws prohibiting all picketing can no longer be tolerated.

The difficulty lies in attempting to draw the line between persuasion on the one hand and intimidation and coercion on the other. The courts seem to be quite willing that the strikers should inform other workmen of their plans and invite them to participate or even try to persuade them to participate. But they have regarded with great disfavor the resort to threats of any kind, to abusive language, and to violence. They have attempted to overcome the difficulty of determining where persuasion leaves off and intimidation begins by controlling the number of pickets and prescribing the manner in which they are to conduct themselves.

### (c) *The Boycott*

The legal status of the boycott has been well stated by E. S. Oakes, who has made perhaps the most exhaustive study of the law of labor combinations. He says, "Notwithstanding the very considerable number of decisions on the subject, the law as to boycotts is in a confused and more or less chaotic condition."<sup>10</sup> The main reason for this seems to be that the term boycott has no standard meaning. Oakes writes that it is a term "of vague signification of which no accurate and exhaustive definition has ever been given."<sup>11</sup> In some instances boycott is defined in such a way as to make boycotts illegal by definition. In one case that has been quoted many times a lower court defined boycott as "a combination of many to cause a loss to one person by coercing others against their will to withdraw from him their beneficial business intercourse, through threats that unless those others do so, the many will cause similar loss to them."<sup>12</sup> When the boycott is defined in that manner there is little question about its legality.

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<sup>9</sup> *Thornhill v. Alabama*, 310 U. S. 88.

<sup>10</sup> E. S. Oakes, *Organized Labor and Industrial Conflicts* (Lawyers' Cooperative Publishing Co., Rochester, 1927), p. 601.

<sup>11</sup> *Ibid.*, p. 602.

<sup>12</sup> *Toledo, etc., Co. v. Pennsylvania Co.*, 54 Fed. 730 (1893).

But it is also quite clear that such a definition does not include all the activities that are usually considered to be boycotts.

We have already had occasion to speak of the primary boycott and the secondary boycott.<sup>13</sup> The primary boycott has to do chiefly with the parties in dispute. In the case of the secondary boycott pressure is brought to bear upon other employers to prevent their dealing with the disputing employer. It is obvious that the primary boycott has little real value in a labor dispute since withdrawal of patronage by the workers immediately concerned will hardly determine the outcome of a strike. In many decisions condemning the secondary boycott the courts have attempted to distinguish it from the primary boycott and have indicated that the latter type is legal. The United States Supreme Court has defined the primary boycott in a somewhat broader way than that given above and yet views it as a legal device. In the Duplex Printing Press case the Court stated: "The substance of the matters here complained of is an interference with complainant's interstate trade, intended to have coercive effect upon complainant, and produced by what is commonly known as a 'secondary boycott,' that is, a combination not merely to refrain from dealing with complainant, or to advise or by peaceful means persuade complainants' customers to refrain ('primary boycott'), but to exercise coercive pressure upon such customers, actual or prospective, in order to cause them to withhold or withdraw patronage from complainant through fear of loss or damage to themselves should they deal with it."<sup>14</sup> In the same case the Court found that a strike against non-union materials constitutes a secondary boycott. The New York Court of Appeals also held that primary boycotts are lawful and secondary boycotts unlawful but reached the opposite conclusion concerning the strike against non-union materials, holding it to be a primary boycott and therefore lawful.<sup>15</sup>

For all practical purposes the value of the boycott turns upon the legality of its secondary form. The courts are at variance concerning this largely because of a lack of general agreement as to the meaning of the term boycott. This confusion has been recognized by the United States Supreme Court itself: "Courts differ as to what constitutes a boycott that may be enjoined. All hold that there must be a conspiracy causing irreparable damage to the business or the property of the complainant. Some hold that a boycott against the complainant, by a combination of persons not im-

<sup>13</sup> See p. 249. The definitions there given are in essential agreement with those given by Oakes. See his *Organized Labor and Industrial Conflicts* (Lawyers' Cooperative Publishing Co., Rochester, 1927), p. 606.

<sup>14</sup> *Duplex Printing Press Co. v. Deering*, 254 U. S. 443 (1921).

<sup>15</sup> *Bossert v. Dhuy*, 221 N. Y. 342 (1917).



mediately connected with him in business, can be restrained. Others hold that the secondary boycott can be enjoined, where the conspiracy extends not only to injuring the complainant, but secondarily coerces or attempts to coerce his customers to refrain from dealing with him by threats that unless they do they themselves will be boycotted. Others hold that no boycott can be enjoined unless there are acts of physical violence, or intimidation caused by threats of physical violence."<sup>16</sup>

An examination of the various decisions suggests certain generalizations that apparently can be made with safety. It is usually lawful for a combination of workers to withhold their patronage from an employer against whom they have a grievance and generally they may also ask and try to persuade others to join them in the boycott. However, in every case the purpose of the boycott must be approved by the court and the means employed in exercising the boycott must be free from physical violence, coercion, and intimidation. If picketing is used it must be lawful, that is there must be no interference with ingress or egress to the boycotted premises. Statements made about an employer and his goods must not be false or libelous and must not be intimidating or coercive in any way. Some courts have allowed the use of the term "unfair" when applied to an employer while others have held that the term implies a threat and is therefore unlawful. Concerning the most important question connected with boycotts, that of the lawfulness of pressure brought to bear upon third parties to induce them to cease dealing with a boycotted employer, the law is in a state of confusion. The need and the desire to exert such a pressure arise in connection with most boycotts. Most manufacturers sell not directly to the public but through dealers; so laborers in the employ of the dealers assist the workers immediately concerned by bringing pressure to bear upon their employers to cease handling the product of the offending manufacturer. The legality of the boycott will remain a moot point until a clear-cut position is taken on this important question.

The confusion above described has not been as important as one might expect. The boycott, although still used to some extent by organized labor, has played a smaller and smaller part in the labor struggle. Undoubtedly the unfavorable court decisions and the confused legal status have had something to do with this, but it is probably more important that labor has found the boycott to be less effective as an economic weapon than was at first anticipated.

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<sup>16</sup> *Gompers v. Bucks Stove and Range Co.*, 221 U. S. 418 (1911).

## THE INJUNCTION

To judge by the great volume of written and spoken matter which has appeared on the subject, the worst menace that organized labor has had to face in recent years has been the injunction. As a matter of fact the actual damage done by the injunction to the activities of organized labor seems to be rather less than labor has encouraged itself to believe. The truth is that a good deal of the sting has been taken out of the injunction by the difficulty which the courts have experienced in making it effective. But the harm done to labor is not the only harm that must be charged to the injunction. Much more than labor the courts themselves have suffered; for the injunction has done more than anything else to destroy the unions' respect for the courts. Organized labor has never had any too much of this, and every time an injunction has been granted in a labor dispute the supply has been diminished still further. Those who are greatly concerned to build up respect for law in general and for constitutional government in particular should take cognizance of this fact.

The use of the method of injunction arose in a very natural way.<sup>17</sup> Originally the king had the power to prevent any action from taking place if there was imminent danger of damage being done, the idea being to prevent the act from being committed rather than to try to inflict a punishment afterward. The power was later transferred to the chancellors and then to the courts of equity. It is clear that in cases of this kind the court must to a very great extent be its own guide. It has legal precedent to go by and certain basic principles that have become fixed, but on the whole the judge possesses wide discretion in the use of the injunction. It has been quite generally established that acts may be enjoined when no pecuniary compensation would be possible for damages done or when the defendants are insolvent or when "to obtain legal redress therefor the annoyance of a multiplicity of suits would follow." The damage to be done must be irreparable, a property right must be involved, and there must be no adequate remedy at law if an injunction is to be granted.

The injunction is a proceeding in equity, and this must be realized by any who want to understand the opposition of labor to its use in labor disputes. Usually in law courts relief is had through a judgment for money damages. The defendant's property is seized and sold by the proper authorities. If it turns out that defendant has no property, there is no way in

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<sup>17</sup> For the most authoritative treatment of the use of the injunction in labor disputes, see Felix Frankfurter and Nathan Greene, *The Labor Injunction* (Macmillan, 1930).

which the judgment can be satisfied because it is not binding upon the defendant's person. A court of equity, on the other hand, issues not a judgment in money but a decree requiring the defendant to perform or refrain from performing a certain act or acts.

The significant thing about this decree is that it is a direct command by the court, a thing which is obviously necessary in many types of cases. The prevailing modern practice is not to have two courts but to have a single judge handle both law and equity cases. This does not mean in any sense that the distinction between the two has been removed, and organized labor's greatest objection to the injunction arises at just this point. When an injunction is violated, the act is treated as contempt of court because it was committed in defiance of an order issued by the court. Therefore, usually the fine or imprisonment is imposed by the very judge who issued the injunction, without a jury trial and without the usual rules of evidence in criminal procedure. Labor did obtain some relief in this respect with the passing of the Clayton Act, which stipulated that a jury trial may be granted where the act constituting the contempt is also a criminal offence. In fact this is about all that labor has got out of the Clayton Act.

Although based upon English procedure the injunction has not been employed to any great extent in English labor disputes. As a matter of fact only two injunctions have ever been granted in the whole history of English labor; and both of these were overthrown, one by a decree of the chancellor and the other (in the Taff Vale case) by an act of Parliament. The history of labor in the United States is strewn with injunctions. The first case to reveal the dangerous possibilities of the device was the Debs case. In 1894 the American Railway Union, which had been organized by Debs, declared a strike against the Pullman Company. The court issued an injunction against officials of the union and all other persons ordering them to refrain from interfering with interstate commerce and the transportation of the mails. The injunction also enjoined any person from "compelling or inducing by threats, intimidation, persuasion, force or violence" any railway employees to quit work. Debs was tried for contempt of court for violating this injunction and sentenced to a prison term.

Then in 1911 came the Bucks Stove and Range case. In this case an injunction was issued against the boycott of the products of the Bucks Stove and Range Company on the part of the "officers of the American Federation of Labor, officers and members of affiliated unions, friends, sympathizers, counsel, conspirators, and co-conspirators." All these persons were forbidden to refer directly or indirectly by printed, written, or spoken words to the allegedly unfair practices of the company or even to the fact

that an industrial dispute existed. They were enjoined from "declaring or aiding any boycott against the complainant in connection with an unfair or similar list;" and "from publishing or otherwise circulating, whether in writing or orally, any statement or notice of any kind or character whatsoever, calling attention of the complainant's customers, or of dealers or tradesmen, or of the public, to any boycott against the complainant, its business or its product, or that the same are, or were, or have been declared to be 'Unfair,' or that it should not be purchased or dealt in or handled by any dealer, tradesman, or other person whomsoever, or by the public."<sup>18</sup> It certainly made a clean sweep. Gompers, Mitchell, and Morrison were found guilty of violating the injunction and were sentenced to prison terms for contempt of court, but they were released on technicalities and never had to serve the sentences.

Two of the most drastic injunctions ever issued in labor disputes were granted shortly after the First World War. In 1919 a strike threatened in the bituminous coal industry. At the request of the Attorney General of the United States, in October, 1919, Judge A. B. Anderson of the Federal District Court in Indiana issued an injunction restraining the union members from calling the strike, directing it, or drawing upon the union funds in the bank for strike benefits. During the railroad shopmen's strike of 1922, at the request of the Attorney General, Judge Wilkerson issued an injunction that has been called "a landmark in the history of American equity."<sup>19</sup> It prohibited the union officials from issuing instructions or urging cessation of work, forbade conspiracies to interfere with railroad operation, and also prohibited picketing and all intimidation and violence. The union officials as well as all others were enjoined from interfering with the railroads and their employees in the performance of their duties. There were also very drastic restrictions applying specifically to the officials of the unions.

The injunction has been given particular significance by the fact that it has been used to prohibit so many different acts. It has been used to prohibit boycotts, refusal on the part of union members to work on non-union material, the sympathetic strike, the unfair list, picketing, and many other activities. One of the most important restrictions, and one that has received considerable publicity, was concerned with persuasion to violate a contract not to join a union. The leading decision on this use of the injunction is the *Hitchman Coal Company* decision rendered by the United

<sup>18</sup> *American Federationist*, 15:114 (1908).

<sup>19</sup> Felix Frankfurter and Nathan Greene, *The Labor Injunction* (Macmillan, 1930), p. 103. For the text of this injunction, see Frankfurter and Greene, *op. cit.*, pp. 253-263.

States Supreme Court in 1917.<sup>20</sup> In this decision the Court upheld an injunction enjoining the United Mine Workers Union from trying to bring into its organization employees of the Hitchman Company who had signed an agreement not to join the union while in the employ of the company. Since the use of contracts in which a worker promises not to join a union are now illegal under the National Labor Relations Act, injunctions for this purpose are no longer an issue.

It is rather significant that in the case of Interborough Rapid Transit Co. vs. Lavin<sup>21</sup> in 1928 the Court of Appeals of New York denied an injunction, refusing to accept as a contract an "understanding" that employees would not join a trade union while in the employ of the company. The important aspect of the Lavin case is the emphasis the Court placed upon the record in the case, which indicated that it would not be bound by previous decisions since the facts might be different in each case. After the Lavin litigation had begun the company entered into new arrangements with the employees whereby the latter "agreed" to abstain from membership in a trade union while in its employ. A new suit was immediately begun and in this case<sup>22</sup> the Court again denied an injunction, refusing this time to accept as a contract the anti-union pledge signed by the employees although the company was ostensibly bound by the terms of the agreement to give employment for a definite length of time as a consideration of the pledge. The Court held that in substance the employment was given merely at will. It was satisfied that in reserving the right of discharge for certain specified causes the company had actually retained for itself the privilege of discharging its employees for practically every reason that in actual practice ever leads to discharge. Again the Court was guided by "the facts in the case."

Very significant also was the hint thrown out by Chief Justice Taft in the case of American Foundries Company v. Tri-City Council (1921) to the effect that the Hitchman decision could be supported only on the ground of use of unlawful means. An examination of the Hitchman decision reveals that the Court gave a good deal of attention to the means used by the union in persuading the employees to join. There is no doubt that the Hitchman case greatly influenced the conduct of union activities during the decade of the twenties.

In the case of Duplex Printing Press Co. v. Deering (1921) the Supreme Court restrained the union members from attempting to prevent

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<sup>20</sup> *Hitchman Coal and Coke Co. v. Mitchell*, 245 U. S. 229 (1917).

<sup>21</sup> *Interborough Rapid Transit Co. v. Lavin*, 247 N. Y. 65 (1928).

<sup>22</sup> *Interborough Rapid Transit Co. v. Green*, 131 Misc. 682 (N. Y. 1928).

the sale and installation of certain non-union presses. An even harder blow was dealt in the case of *Bedford Cut Stone Co. v. Journeymen Stone Cutters' Association* (1927) when the Supreme Court upheld an injunction issued to restrain union men from refusing to work on stone partly prepared by non-union labor in another state and shipped in interstate commerce. In his dissenting opinion Associate Justice Brandeis stated that according to the interpretation of the majority, Congress had created in the anti-trust acts an instrument for imposing restraints upon labor that reminded one of involuntary servitude. But the League for Industrial Rights, an employers' organization, hailed the decision as a "landmark of judicial history."

It is impossible to determine the exact number of injunctions that have been issued in labor disputes. In his study of injunctions Mr. Edwin E. Witte found 508 cases in federal courts and 1364 cases in state courts in which injunctions were issued prior to May 1, 1931.<sup>23</sup> He found injunctions in every state except South Carolina, with the industrial states predominating. He believes that the use of injunctions steadily increased. There was probably a decrease in absolute numbers during the six or eight years leading up to 1932, but the decrease was probably smaller than the decrease in the number of strikes. Professor Paul Brissenden found that during the period 1875 to 1932 as many as 2300 injunctions may have been issued in the seven most highly industrialized states.<sup>24</sup>

On occasion organized labor itself has resorted to the use of the injunction. Mr. Witte has information regarding eighty-eight cases of injunctions sought by, or in behalf of, labor unions against employers or public officials.<sup>25</sup> He has not included in this figure applications for writs to prevent the unauthorized use of union labels and trade marks. Two-thirds of the entire number occurred during the twenties. In the two years before 1932 they were one-fourth as numerous as the application for injunctions by employers.<sup>26</sup>

Of the number of injunctions applied for by labor forty-three were allowed. Eleven of these were subsequently dissolved. Labor has regarded some of them as great triumphs, in particular the one granted the Brotherhood of Railway Clerks against the Texas and New Orleans Railroad Co.<sup>27</sup> In this instance labor gained every objective sought. In certain types of

<sup>23</sup> Edwin E. Witte, *The Government in Labor Disputes* (McGraw-Hill, 1932), p. 84.

<sup>24</sup> Paul F. Brissenden, "The Campaign against the Labor Injunction," *American Economic Review*, 23:50-51 (March, 1933).

<sup>25</sup> Edwin E. Witte, *The Government in Labor Disputes* (McGraw-Hill, 1932), p. 231.

<sup>26</sup> *Ibid.*, p. 232

<sup>27</sup> See pp. 403-404.

cases, when employers threaten to break trade agreements in states where such agreements are regarded as enforceable contracts or when public officials refuse to allow union meetings, labor has found the injunction a useful weapon. Nevertheless, Mr. Witte is of the opinion that "injunctions are still principally a weapon of the employers and likely to remain so."<sup>28</sup>

The use of injunctions in labor disputes has, of course, its friends and its enemies. The defense attempts to justify it on the ground that the right to do business is property and injunctions may properly be utilized "to protect property from irreparable damage." No one doubts that physical property may be destroyed; and if in some way a man is prevented from carrying on his business he will suffer a loss in property exactly as hurtful as though his physical plant had been swept away. Today, therefore, the right to buy and sell is included among the intangible values, and the courts of equity are called upon to protect "the right of others to conduct their business in a lawful manner, to give their custom where they will, the right to dispose of their labor and work under the conditions that seem to them best." Intangible values are recognized on all sides at the present time, not only in law but in business. Good will is bought and sold as if it were a physical asset.

This was brought out by the Supreme Court in the case of *Truax v. Corrigan* (1921). Arizona had passed a law very similar to the Clayton Act. The owner of a restaurant asked a lower court to issue an injunction restraining the union men from destroying his business by picketing. On appeal the Supreme Court declared the law unconstitutional, saying: "Here is a direct invasion of the ordinary business and property rights of a person, unlawful when committed by any one, and remedial because of its otherwise irreparable character by equitable process, except when committed by employees of the injured person. If this is not a denial of the equal protection of the law, then it is hard to conceive what would be."<sup>29</sup>

Objections to the use of injunctions in labor disputes have been brought not only by organized labor but by judges, legal writers, and other students. A traditional objection of labor has been that injunctions are used differently in labor disputes from the way in which they are used in other cases, that their use in labor disputes is based upon an incorrect conception of property, and that therefore they should not be used at all in labor cases. This objection has received little support from legal scholars and even one

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<sup>28</sup> Edwin E. Witte, *The Government in Labor Disputes* (McGraw-Hill, 1932), p. 234.

<sup>29</sup> *Truax v. Corrigan*, 257 U. S. 312 (1921).

of the A. F. of L.'s most influential advisors, Mr. T. C. Spelling, has admitted that there is no longer anything to be gained by attacking injunctions on this score.<sup>30</sup>

There is also little foundation for the claim which is sometimes made by organized labor that there is a great deal of discrimination in the procedure followed in labor cases. As a matter of fact the procedure that is followed in injunction cases in labor disputes is essentially the same as that followed in other injunction cases.

The real ground for complaint, so forcefully and clearly brought out by Frankfurter and Greene and also by Witte, is that the procedure which is suited to other kinds of cases is not suited to labor disputes. Mr. Witte summarizes the more important objections on this score as follows: (1) that injunctions are issued without affording the defendants a fair opportunity to present their side of the case; (2) that injunctions are often issued upon insufficient proof; (3) that injunctions are a species of judicial legislation which besides representing an unwarranted extension of judicial powers has the vice of extreme vagueness; (4) that there are no adequate provisions for prompt appeals; (5) that injunctions deny persons accused of crime a fair trial.<sup>31</sup>

It should be emphasized that these objections rest upon the contention that a different procedure ought to be followed in labor disputes because labor disputes present special problems. It is not charged that discrimination exists, for it is admitted that the same procedure is followed in other cases. Let us note one way in which the labor dispute is a special case calling for special treatment.

The fundamental purpose of the injunction is to provide a means whereby when the plaintiff presents a meritorious case, "he should not be exposed to the peril of irreparable damage before the court can make available to him its slower, though much more scrutinizing, process of fact-finding." No great problem arises when temporary suspension of the defendant's activities results in no considerable damage to him. But complicating factors are usually present in labor cases. If it happens to be a strike injunction, only the strikers must suspend activities while the employer continues to get ready for the strike. A suspension of strike activities may of itself defeat the strike even though the injunction is later lifted. In such a case the *defendant* may have suffered irreparable damage

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<sup>30</sup> T. C. Spelling and J. H. Lewis, *A Treatise on the Law Governing Injunctions* (Thomas Law Book Co., St. Louis, 1926), pp. 224-229.

<sup>31</sup> Edwin E. Witte, *The Government in Labor Disputes* (McGraw-Hill, 1932), pp. 106-108.



and perhaps all the time, as later decided by the court in lifting the injunction, he was acting entirely within his legal rights.

For many years organized labor has striven to obtain legislative relief from the use of the injunction. A victory seemed to have been won when the Clayton Act was passed; but, as we have seen, subsequent court decisions practically nullified this act as far as its labor provisions were concerned. Professor J. F. Christ, after a careful examination of all of the reported federal labor cases, concludes that the net results of the Clayton Act "is (a) that 10 injunctions were issued that could not have been issued without the statute, (b) that 35 other injunctions were issued in spite of the statute, and (c) that in not a single one of the remaining 26 reported cases was an injunction denied on account of the statute."<sup>32</sup> A number of states have also enacted anti-injunction laws, but several have been declared unconstitutional and the effectiveness of most of the others has been curtailed by court decisions.

A distinct victory was won by the anti-injunctionists on March 23, 1932, when the Norris-LaGuardia (federal anti-injunction) bill became a law. This act provides for a detailed revision of equity practice in labor litigation and seeks to withdraw the aid of the federal courts from the enforcement of anti-union agreements, to correct procedural abuses, to define and confine discretionary jurisdiction, and to extend the right of jury trial for contempt.

There is no question about the constitutionality of this law. Over the vigorous dissent of Butler and McReynolds the Supreme Court held in the case of *Lanf v. E. G. Skinner and Company* that the District Court had erred in granting an injunction in a labor dispute in the absence of findings which the Norris-LaGuardia Act makes prerequisites to the exercise of jurisdiction.<sup>33</sup> Butler insisted that if the picketing was a labor dispute under the Norris-LaGuardia Act, then the act was depriving the respondent of its property and business without due process of law, in contravention of the Fifth Amendment.

The decision of the Supreme Court must govern other federal courts but not the state courts in their interpretations of the several state anti-injunction laws. Although none of the state laws have been held unconstitutional under the state constitutions, there have been widely varying interpretations by the state courts of details of the laws. One important difference of interpretation has been over the existence of a labor dispute.

<sup>32</sup> J. F. Christ, "The Federal Courts and Organized Labor," *Journal of Business*, 5:105 (April, 1932).

<sup>33</sup> 303 U. S. 323 (1938).

For example, picketing in the absence of a strike has been held to be a labor dispute in some jurisdictions and not a labor dispute in others.

With the passage of the National Labor Relations Act forbidding employer interference in union organizing, one of the fields for the use of injunction proceedings was removed. Since the anti-union contract is outlawed, one of the most favored uses of the injunction has disappeared. Although the field for labor injunctions is thus limited there still remains ample opportunity for the use of the labor injunction by the state courts in approximately three-fourths of the states not having laws comparable to the Norris-LaGuardia Law. In the limited fields it remains true today as Professor Brissenden stated in 1933 that "the most formidable task confronting campaigners against the abuses of the injunction in labor controversies is that of dealing with the practice now prevalent in our state courts, three-fourths of which have enacted no legislation whatever on this subject."<sup>34</sup>

#### LABOR AND THE COURTS

There is no question that in the past organized labor has been antagonistic to the courts. Labor has felt that the courts have been unfair, and that they have been altogether too diligent in protecting property rights at the expense of personal rights. Nor has this attitude been confined to the inflammable left-wing elements in the labor movement but has penetrated to the most conservative unions in the country. Much of the justification for this attitude has grown out of decisions concerning the union itself, the methods employed by the union, and the use of injunctions in labor disputes.

Not all judges use the bench to harangue against labor organizations, but some have gone so far as to reveal their hostility openly and without apparent shame. John Fitch cites an excerpt from a decision rendered by a member of the New York Supreme Court: "It is, therefore, important that they [foreigners] be made to realize that the American people and institutions stand for a liberty with justice to all and with our shops open to all on a common ground of equality. . . . During the war did not the labor delegates in this country hold the government by the throat, when weak-kneed officials and public officers bent to their demands, instead of using the draft army for essentials? Did they not intimidate legislators and executive officers with their threats and scold at the judge . . .?"<sup>35</sup> Another judge

<sup>34</sup> Paul F. Brissenden, "The Campaign against the Labor Injunction," *American Economic Review*, 23:51 (March, 1933).

<sup>35</sup> John Fitch, *The Causes of Industrial Unrest* (Harpers, 1924), p. 331.

of the New York Supreme Court later declared: "They [the courts] must stand at all times as the representatives of capital, of captains of industry, devoted to the principle of individual initiative, protect property and persons from violence and destruction, strongly opposed to all schemes of nationalization of industry, and yet save labor from oppression, and conciliatory toward the removal of the workers' just grievances."<sup>36</sup>

Other judges have spoken in the same vein, not all of them as unrestrainedly as these two, but with sufficient candor to instil a serious doubt in the laborer's mind as to his chances of getting even his strictly legal rights protected at their hands. It is true that in any department of any government there are bound to be some officers who are obviously not competent to discharge their duties, and that this must necessarily be true of the judiciary system along with the rest of the government. We must expect that there will be judges who are prejudiced, who are ignorant of judicial procedure or indifferent to it, who in general are unfit for the posts assigned to them. But when all this is said, there remain the objectionable decisions and the indignation which they have aroused.

Of still greater significance than these somewhat extreme expressions of prejudice against the unions and their practices is the position taken by outstanding jurists concerning what they consider to be the fundamental principles of constitutional law. In rendering the decision in the case of *Adair v. United States*, Mr. Justice Harlan of the U. S. Supreme Court said: "The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it. So the right of the employee to quit the service of the employer, for whatever reason, is the same as the right of the employer, for whatever reason, to dispense with the services of such employee. . . . In all such particulars the employer and the employee have equality of right, and any legislation that disturbs that equality in an arbitrary interference with the liberty of contract, which no government can legally justify in a free land."<sup>37</sup> A careful scrutiny of this decision indicates quite clearly that the legal position taken is far removed from economic reality. The right of an employee to quit the service of the employer may be the same from a technical legal standpoint as the right of the employer to dispense with the services of such employee. But under modern industrial conditions, with John Doe working for the United States Steel Corporation

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<sup>36</sup> *Schwartz and Jaffe v. Hillman*, 115 Misc. Reports 61 (N. Y., 1921).

<sup>37</sup> *Adair v. United States*, 208 U. S. 161 (1908).

or the Standard Oil Company, it borders on the absurd to think of the two rights as equivalent.

The doctrine expounded by Mr. Justice Harlan in 1908 was again expressed when Mr. Justice Sutherland rendered the decision of the Supreme Court in the case of *Adkins v. Children's Hospital* (1923). He declared: "That the right to contract about one's affairs is a part of the liberty of the individual protected by this clause [Fifth Amendment] is settled by the decision of this court, and is no longer open to question. . . . Within this liberty are contracts of employment of labor. In making such contracts, generally speaking, the parties have an equal right to obtain from each other the best terms they can as the result of private bargaining."<sup>38</sup> He goes on to say that the exercise of legislative authority to abridge freedom of contract can be justified only by the existence of exceptional circumstances.

The average trade-union leader will find a good deal of fault with this reasoning. Why go to such pains, he wonders, to preserve the steel worker's constitutional liberty to sign a contract stating that he will work twelve hours a day instead of eight, for three dollars a day instead of five? Such tender solicitude for the workingman's rights has its comical side. From here it is an easy step to the conclusion that these learned justices are dealing in insincere gestures and meaningless legal phrases in order to sacrifice the laborer's interests under the guise of fidelity to the constitution.

Today the federal courts are following the more realistic position of the U. S. Supreme Court in labor decisions. It is a far cry indeed from the decision of that court in the cases of *Adkins v. Children's Hospital*<sup>39</sup> and *Hammer v. Dagenhart*<sup>40</sup> to such more recent cases as *West Coast Hotel Company v. Parish*<sup>41</sup> and the *Jones and Laughlin Steel*<sup>42</sup> case. In the *Adkins* case the Court had repeated the fiction of liberty of contract in the labor field. In the *Parish* case the Court said "Our conclusion is that the case of *Adkins v. Children's Hospital* should be, and it is, overruled." In the case of *Hammer v. Dagenhart* the Court has denied that Congress could regulate child labor in manufacturing industry since manufacturing was not commerce. In the *Jones and Laughlin Steel* case the Court upheld the Labor Relations Act as a proper use by Congress of the constitution's interstate commerce clause. Furthermore, the statement of Chief Justice Hughes in that case may well mark a new departure by the court toward organized labor.<sup>43</sup>

<sup>38</sup> *Adkins v. Children's Hospital*, 261 U. S. 525 (1923).

<sup>39</sup> 261 U. S. 161 (1908).

<sup>40</sup> 247 U. S. 251 (1918).

<sup>41</sup> 300 U. S. 379 (1937).

<sup>42</sup> 301 U. S. 1 (1937).

"Long ago," he said, "we stated the reasons for labor organizations. We said they were organized out of the necessity of the situation; that a single employee was helpless in dealing with an employer; that he was dependent ordinarily on his daily wage for the maintenance of himself and family; that if the employer refused to pay him the wages he thought fair, he was nevertheless unable to leave the employ and resist arbitrary and unfair treatment; that union was essential to give laborers opportunity to deal on an equality with their employer."<sup>43</sup>

So long as the Supreme Court shows such an understanding of economic realities, organized labor's opposition to the courts is bound to diminish. Unfortunately, not all state courts have followed this realistic approach of the Chief Justice.

At the moment the federal courts at least have taken a fairly liberal position on social legislation. It must not be forgotten that the Court has at times been "liberal" in the past, only to revert to a reverence for property rights. With this possibility in mind, a most significant matter from organized labor's point of view is the make-up of the courts, particularly of the United States Supreme Court. Our political system is so constituted that the courts have a tremendous amount of power. Each state has its own constitution and the federal government has its constitution. In theory each state has all the powers that have not been specifically taken away from it, the federal government retaining only those that have been specifically granted to it by the federal constitution. It is seen at once that the constitution could not possibly contain definite statements with regard to all the various powers that the federal government is expected to exercise. In the very nature of the case these grants of power must have a broad and general character. This is precisely what we find when we examine the document itself; it is very short and its clauses are very general. With such a brief constitution, written a century and a half ago when the world was a decidedly different place from what it is now, the government could not but lean heavily upon the interpretations of the courts. So true is this that the theory that we have a written constitution may be regarded as almost pure fiction.

In the circumstances the power of the court can be nothing short of immense. The constitution largely becomes what the judges make it; and in consequence of their high degree of control over social legislation through these sweeping interpretative powers, it can be accurately said that they hold the balance of power between the employer and the employee. Our

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<sup>43</sup> *Ibid.*

brief survey of some of the outstanding labor decisions and our study of the union itself and of its activities as affected by injunctions have shown that without the consent of the court the union simply cannot exist except in an emasculated form which could not long survive and would be negligible if it did.

Labor has learned by bitter experience that its destinies are practically in the hands of the judges. In such a situation the all-important thing is the social philosophy which these men embrace. It may be assumed that most of them are honest, particularly those who have reached the highest court in the land. But two men may be absolutely honest and yet arrive at different conclusions on a given case because of differing social points of view. On the same bench for several years sat Chief Justice Taft and Associate Justice Holmes, both of whom would be universally ranked as outstanding jurists. No one has ever seriously questioned the integrity of either. Both were thoroughly trained in the law. Both had had wide judicial experience. Both had keen and powerful intellects. Yet confronted with the same situation, the same evidence, the same law, and the same constitution, they frequently arrived at opposite conclusions—the one that the act in question was constitutional, the other that it was not.

A case in point is that of *Truax v. Corrigan* (1921). Chief Justice Taft in delivering the decision of the Court held that the Arizona statute in question was unconstitutional. Among other things he said: "The Constitution was intended, its very purpose was to prevent experimentation with the fundamental rights of the individual."<sup>44</sup> Mr. Justice Holmes, dissenting, concluded by saying: "There is nothing I more deprecate than the use of the Fourteenth Amendment beyond the absolute compulsion of its words to prevent the making of social experiments that an important part of the community desires, in the isolated chambers afforded by the several States, even though the experiments may seem futile or even noxious to me and to those whose judgment I most respect."<sup>45</sup> Could the crucial importance of the judge's social philosophy be more clearly shown? And if individual bias affects the decisions of high-minded and clear-thinking jurists of the caliber of Taft and Holmes, how much more must it sway the judgments of the many lesser men on the bench?

The importance of a man's social philosophy in determining his decisions is sometimes explicitly recognized by the judges themselves. In his dissenting opinion in the *Lochner* case Mr. Justice Holmes said: "This case is decided upon an economic theory that a majority of the country does not

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<sup>44</sup> *Truax v. Corrigan*, 257 U. S. 312 (1921).

<sup>45</sup> *Ibid.*

entertain. If it were a question of whether I agreed with that theory I should desire to study it further and long before making up my mind. But I do not conceive that to be my duty, because I strongly believe that my agreement or disagreement has nothing to do with the right of a majority to embody their opinions in law.”<sup>46</sup> Mr. Justice Brandeis, dissenting in the *Duplex Printing* case, alluded to the fact that the courts had reversed themselves concerning the legality of certain kinds of strikes. “The change in law by which strikes once illegal and even criminal are now recognized as lawful was affected in America largely without the intervention of legislation. This reversal of common-law rule was not due to the rejection by the courts of one principle and the adoption in its stead of another, but to a better realization of the facts of industrial life.” At a later point in the same opinion he explained how the Clayton Act came to be passed. “It was objected that, due largely to environment, the social and economic idea of judges, which thus became translated into law, were prejudicial to a position of equality between workingman and employer; that due to this dependence upon the individual opinion of judges, great confusion existed as to what purposes were lawful and what unlawful; and that in any event Congress, not the judges, was the body which should declare what public policy in regard to the industrial struggle demands.”<sup>47</sup> It was to clear up this confusion that Congress passed the Clayton Act defining certain rights of unions.

A judicial bias based upon the environment in which the judge has been reared and the legal training he has had is not peculiar to America, as is shown by a statement of the Webbs dealing with this very point. “If the action comes into court the Trade Union will know that, although the jury may give a verdict as to the bare facts, the judgment will, in nine cases out of ten, depend practically on the judge’s view of the law. And though we all thoroughly believe in the honesty and impartiality of our judges, it so happens that, in the present uncertainty, the very law of the case must necessarily turn on the view taken of the general policy of Trade Unionism. If the judges believed, as we believe, that the enforcement of Common Rules in industry, and the maintenance of a Standard Rate, a Normal Day, and stringent conditions of Sanitation and Safety were positively beneficial to the community as a whole, and absolutely indispensable to the continued prosperity of our trade, they would no more hold liable for any damage which, in the conduct of its legitimate purpose, it incidentally caused to particular individuals a reasonably managed Trade Union

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<sup>46</sup> *Lochner v. New York*, 198 U. S. 45 (1905)

<sup>47</sup> *Duplex Printing Co. v. Deering*, 254 U. S. 443 (1921).

than a militant Temperance Society or the Primrose League." <sup>48</sup> Fortunately for the English trade unions the courts in that country do not have the tremendous power that American courts have.

Much, therefore, is seen to depend upon the temperament, the training, and the early environment of the judge. What, in general, is the judge's mental outfit apt to be? It is upon this that organized labor has centered its attack and not without some justification. In a letter to Senator Lodge concerning the prospective appointment of Oliver Wendell Holmes to the U. S. Supreme Court, President Theodore Roosevelt said that Judge Holmes' labor decisions "which have been criticized by some of the big railroad men and other members of large corporations, constitute to my mind a strong point in Judge Holmes' favor. The ablest lawyers and greatest judges are men whose past has naturally brought them into close relationship with the wealthiest and most powerful clients, and I am glad when I can find a judge who has been able to preserve his aloofness of mind so as to keep his broad humanity of feeling and his sympathy for the class from which he has not drawn his clients. I think it eminently desirable that our Supreme Court should show in unmistakable fashion their entire sympathy with all proper effort to secure the most favorable possible consideration for the men who most need that consideration." <sup>49</sup> It is very true, as President Roosevelt intimated, that most of our lawyers and judges have been drawn from the upper classes and have remained in closest touch with those classes; and hence that they tend to reflect their point of view and their sympathies, and thus, in a sense, to represent them. Their social philosophy tends to be the philosophy of men who have prospered under the present economic system, that is to say, a philosophy of extreme conservatism.

Nor has the training of the lawyer been such as to modify the ideas he has absorbed from his environment. The law student is taught to revere the sacredness of precedent rather than the evolutionary nature of society; and so at the very time of life when change normally seems least obnoxious the young lawyer has already come to regard the legal aspects of society as static, if not the entire society itself. Only recently have some of the larger law schools begun to recognize the need for economic and social training. If this realization were to infect all the great law schools of the country and all of them were to launch out boldly in an attempt to supply the lack,

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<sup>48</sup> Sidney and Beatrice Webb, *Industrial Democracy*, Introduction to the 1902 edition (Longmans), pp. xxxi-xxxii.

<sup>49</sup> Charles A. Beard, "The Dear Old Constitution," *Harpers*, 160:289 (Feb., 1930).



there would be some ground for hope that eventually the courts would acquire an evolutionary concept of society.

#### RIGHTS OF EMPLOYERS

Not only is the legal position of union activities important, but important also is the legal status of those activities of the employer which have to do with the industrial conflict.

The courts have not spoken many times concerning the legality of employers' combinations, but the decisions that have been rendered indicate quite definitely that employers have the legal right to combine against the demands of employees. It has been decided that employers may bind themselves by penalties not to deal with labor unions and that these penalties are enforceable both at law and through injunctions.<sup>50</sup> The employers' position has been made even stronger by a decision, the only one raising the question, which declares that unions may not combine to prevent employers from belonging to employers' associations.<sup>51</sup>

The lockout is often thought of as the counterpart of the strike and from the social point of view it probably has about the same effect. We have seen that there are definite limitations upon the employees' right to strike, but the decisions that have been given, although fewer than those on the legality of employers' combinations, have sustained the lockout without question.

There is also little to go on in trying to determine the legal status of the employers' boycott, but the most general view seems to be that it has the same standing before the law as when used by labor organizations.

Picketing is the union's device to prevent the use of strike breakers by the employer. In a previous discussion we noted that the union's practice of picketing is very seriously interfered with by the law. On the other hand the employer's use of strike breakers on any and all occasions has been perfectly legal. In 1936, however, Congress passed the Byrnes Act which forbade the transportation in interstate commerce of persons who were to be used to intimidate peaceful pickets. The employers' right to use strike breakers has been further limited by decisions of the National Labor Relations Board holding that such practices constitute unfair labor practices under the law.<sup>52</sup>

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<sup>50</sup> For a list of cases on this point, see Edwin E. Witte, *The Government in Labor Disputes* (McGraw-Hill, 1932), p. 207.

<sup>51</sup> *Parker Paint and Wall Paper Co. v. Local Union*, 87 W. Va., 631 (1921).

<sup>52</sup> *Matter of Remington-Rand Co.*, 2 NLRB, 626.

One really important right of the employer, and the only one which from a practical standpoint is at all comparable to the employees' right to strike, is the right of individual discharge. In enforcing a lockout the employer damages his business in much the same way as his employees would if they struck. But if he can pick out the union agitators and leaders and can discharge them at will, he holds a weapon which is not only much more effective but also much more economical than the lockout. As described in an earlier section, this former right of employers has completely disappeared in any industry coming under the jurisdiction of the Labor Relations Board.

The employers have found that the anti-union contract has been a most effective weapon against unionism. This kind of contract was used as long ago as the 1880's, when it was known as the "iron-clad" contract,<sup>53</sup> but did not come into general use until after the Hitchman case in 1917.<sup>54</sup> We recall that in this case the Supreme Court of the United States upheld an injunction prohibiting the union from making any attempt to organize the employees of the plaintiff coal corporation, who had signed agreements not to join the union while in the employ of the company. No statute was involved in the decision. There is an important difference between the Coppage decision and the Hitchman decision, although the former also held in general that anti-union contracts were lawful. Merely treating these contracts as lawful did not make them very useful to employers, because the employers' only recourse in case of breach of contract would have been to sue for damages and suing propertyless or almost propertyless employees is not a very profitable enterprise. As a matter of fact there is no recorded case of any employer suing an employee for violating an anti-union contract. The great value of the contract consisted in the restraint placed upon the labor unions and their organizers. This is where the Hitchman case made its great contribution. The decision not only held the contracts to be lawful but also held that third parties might not try to persuade employees to break them.

It is easily understood, therefore, why the Hitchman decision was followed by widespread use of the anti-union contract, but this device too has fallen before the National Labor Relations Act and the decisions of the Labor Board holding such contracts to be a violation of the freedom of organization guaranteed by the law.

The blacklist is very definitely related to the right of the employer to

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<sup>53</sup> For examples of the use of these "iron-clad" contracts, see G. E. McNeill, *The Labor Movement—The Problem of Today* (A. M. Bridgman, Boston, 1887), pp 224-225; also Norman J. Ware, *The Labor Movement in the United States, 1860-1895* (Appleton, 1929), p. 124.

<sup>54</sup> *Hitchman Coal and Coke Co. v. Mitchell*, 245 U. S. 229 (1917).

discharge. In theory the blacklist does not have the legal standing that the right to discharge has, a number of states having forbidden it by general statute. At the present time, of course, the right to discharge for union activity is likewise limited by the provisions of the National Labor Relations Act. Probably all of these anti-blacklist laws are constitutional. Supporting these statutory provisions is the fact that it is an actionable wrong for an employer or anyone else to procure the discharge or prevent the employment of a worker by false representations, and that even if the statements are truthful the person procuring the discharge is liable if it can be shown that he acted from malicious motives.

From a practical standpoint it makes little difference whether the blacklist is legal or not. By its very nature it is a device which must be used in secret and in these days of the telephone and the telegraph, of codes and card systems, it is not an easy thing to detect. Important, too, from a legal standpoint, is the fact that a former employer furnishing information at the request of the present employer is usually regarded as especially privileged. Many of the anti-blacklist laws expressly state this practice to be legal and thereby largely defeat their own purpose, inasmuch as a former employer is the most common source of information.

Furthermore an employee who is discharged because his name is on the blacklist must, if the information has been furnished gratuitously by some person or organization, prove who furnished it and that he was discharged on that account before he can recover damages. It is quite clear that no employee could possibly do this unless the employer were in sympathy with him. The ineffectiveness of the anti-blacklist laws is clearly brought out by the fact that only two successful criminal prosecutions for blacklisting are known. There have been less than a dozen cases in which damages have been recovered and there is but one instance of an injunction issued against a blacklist.<sup>55</sup> The blacklist too has come before the Labor Relations Board, for the Board has held that discrimination in hiring a man because of past union activities is forbidden and has ordered union men so discriminated against to be hired. The Supreme Court has upheld this position in the case of the Phelps Dodge Corporation, thus making the blacklist not only illegal but extremely dangerous to use since an employer using it runs the chance of payment of back wages.<sup>56</sup>

The sum and substance of all this is that while the employees have been definitely restricted in the use of their various tactics by the law, the em-

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<sup>55</sup> Edwin E. Witte, *The Government in Labor Disputes* (McGraw-Hill, 1932), p. 215.

<sup>56</sup> *Phelps Dodge Corp. v. NLRB* 85 L. Ed. 753 (1941).

ployer in his fight against trade unionism has in actual practice been much less restricted. Since the passage of the National Labor Relations Act, however, there have been comparable restrictions upon employers.

### THE USE OF POLICE

In discussing the part played by the government in the industrial conflict some mention must be made of the activities of the police. No one, unless it be an occasional anarchist, seriously questions that the police have a legitimate function to perform. Group life is dependent on the preservation of order and the protection of life and property. Hence, whenever life and property are threatened or serious disturbances loom as a real possibility, it is both natural and desirable that the government should be on hand in the shape of its police to perform its legitimate function.

That these threats to order and to life and property are present during a strike is obvious. The coming of police to a strike area, therefore, cannot in itself be regarded otherwise than as the exercise of a legitimate function on the part of the government through the instrumentality of its appropriate member. It is when the police step over the line that marks out this legitimate function and begin to take sides in the controversy itself that they lay themselves and the government open to very grave criticism. In attempting by any means whatsoever to shape the outcome of the controversy they are assuming a function that cannot normally be regarded as legitimate, and so the side that has not gained their favor, usually the strikers, is seized by a resentment and a rancor that become almost impossible to control.

The problem grows even more serious when, in the judgment of the employer, an insufficient number of police have been furnished by the government and he is permitted to make up the lack by engaging his own police. For if it is hard for the government police to be impartial, for the company police it is well-nigh impossible. They are hired by the company, and if they protect their employer's interests as over against the interests of the workers, could anything else be expected of them? Clashes between strikers and company police have been all too frequent, as to a lesser degree have been clashes with government police also.

It is not to be assumed, of course, that the police on every possible occasion will be found clubbing and shooting the strikers. This would be far from the truth. On some occasions they have shown admirable restraint in the face of great provocation. Sometimes not only the police but the government officials have even gone so far as to give the employers grounds for complaint by their friendliness toward the strikers. This is apt to be the case when the union is strong enough to swing community sentiment

over to its side. Cases where the officials themselves are union men are not unknown.

The strike situation is not one to encourage amicable relations between the police and the strikers. In issuing their orders to disperse or to move on, the police are quite apt to be addressing strikers whether they know it or not, and immediately the workers begin to regard them as their natural enemies. Moreover, strikers who gather in crowds are gathered for a stern purpose and being very tense are only too apt to become boisterous and unruly. And so the police on their part begin to think of all strikers as disturbers of the peace. Suspicion and hatred have poisoned the atmosphere almost before the strike has begun.

It is exceedingly difficult, usually, to fix the blame for the clashes that take place between the police and the strikers. The familiar story is that "the other side fired first and we returned the fire in self-defense." Impartial eyewitnesses are not always present and when they are they do not always furnish identical accounts.

The Homestead steel strike of 1892 was marked by a clash between the strikers and the Pinkerton guards in which a dozen men on both sides were killed and many severely wounded. Early labor disturbances in Colorado brought numerous fights between strikers and the police. A report of labor disturbances in Colorado prepared by Carroll D. Wright in 1905 piles up an appalling heap of data on violence which can lead to only one conclusion—that partisanship reigned during these industrial conflicts.

Owen R. Lovejoy tells of an experience he had during the 1912 Lawrence textile strike:<sup>57</sup> "We saw one man, probably a picket, run out of the mill section. At least he was a pale, poorly clad, shivering little man, without an overcoat, whose only mark of warmth was a small white ribbon on his coat which read, 'Don't be a scab.' A soldier with levelled bayonet was walking behind him as we came on the scene. A dozen other soldiers stood at the corner watching him go. Curiosity led me to ask a sentry,

" 'Where are they taking him?'

" 'Anywhere to hell out of here,' was the reply.

" 'But what was he doing?' I asked.

" 'Asking someone not to work, I suppose, or calling him a scab. He's a picket.'

" 'But,' I ventured, 'asking a man not to work and calling him a scab are not the same, are they?'

" 'Get to hell out of here! I ain't got no time to chew the rag with

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<sup>57</sup> Owen R. Lovejoy, "Right of Free Speech in Lawrence," *Survey*, 27:1904 (Mar. 9, 1912).

you fellows,' he said, with an ominous gesture that indicated that the great state of Massachusetts was backing him in quelling my riot.

"I asked another lad in uniform: 'Don't you allow any picketing if they are quiet and orderly and peaceful?'

"He appeared to think me feebleminded, as he sneeringly replied, 'Not a damned one; not if we see 'em!'

One of the bitterest labor struggles of modern times occurred in the Colorado mines in 1913 and 1914. This strike was accompanied by many collisions between the police and the strikers with resulting brutalities and killings. There were only two months during the entire fourteen of the strike in which neither militia nor federal troops were on the field. Violence was particularly prevalent during the period. It is very evident that police interference was necessary, also that the strikers were to a large extent responsible for the frequent clashes with the police. But it is another matter to place the entire responsibility on their shoulders. Conditions in the mines were such as to drive any normal man to violence. In this particular instance there is little doubt that the federal troops performed a notable service, although as much cannot be said for the state militia.

When the Lawrence textile workers went on strike in 1914 the police again assumed prerogatives which did not belong to them. Eyewitness after eyewitness testified that without any apparent provocation the police clubbed and kicked not only strikers but men whose only offense was to give an appearance of being in sympathy with them. There is every evidence that the atmosphere was charged with an anti-government feeling on the part of the strikers and an anti-Bolshevist feeling on the part of the various kinds of officials, a situation which made police action almost inevitable.

In the steel strike of 1919 and 1920 the police were particularly given to intimidating the strikers and protecting the interests of the employers. This was especially true in western Pennsylvania where the state constabulary cooperated with the local police in "quelling riots." According to the evidence presented to the Senate Committee on Labor the strikers were beaten, harassed, and interfered with on numerous occasions. Crowds that were entirely peaceful and orderly were dispersed with great brutality. Meetings were prohibited in many of the towns, and officials showed themselves extremely partial toward the employers. James S. Crawford, mayor of Duquesne and brother of the president of the McKeesport Tin Plate Company, once said in denying a permit to organizers, "Jesus Christ himself couldn't hold a meeting in Duquesne." In convicting J. L. Beaghen, an organizer who attempted to hold a meeting, Mayor Crawford stated publicly, "If I had *my* way you would be sent to the penitentiary for 99 years

and when you got out you'd be sent back for 99 years more." <sup>58</sup> Sheriffs, mayors, and state police united to form a solid front against all union organizers and sympathizers.

That governmental officials and the police have not forgotten how to use force in handling a strike was well illustrated in the Passaic textile struggle of 1926. The editorial staff of the *Christian Century*, after making an exhaustive study of the strike, reported in part as follows: "On Monday [the sixth week of the strike] police appeared mounted on horses and motorcycles. On Tuesday tear bombs and fire hose were used by Passaic police to disperse picket lines. On Wednesday newspaper reporters and photographers were clubbed, together with many strikers, by Clifton and Passaic police." During the ninth week "the second Ackerman Avenue bridge attack took place. . . . Clifton police stopped a picket line of 3,000 people as they came over the bridge, and clubbed many strikers." The American Civil Liberties Union asked for 16 warrants to be sworn out against Passaic police on charges of atrocious assault. The request was refused by Police Judge William Davidson on the ground that he "would not allow the clerk of this court to issue warrants against any officer when strikers were the complainants." And during the twenty-first week, "There was much violence during this week. Bombings continued; there were fifteen arrests in one day; a striker's child was shot; a Lodi picket was wounded by a strikebreaker and later fired on by police officers who arrested him; a county policeman shot a woman striker; there were many cases of beatings by police." <sup>59</sup> Other accounts of police brutality, denial of the right of assembly, and denial of the right of free speech are too numerous and convincing to leave much doubt that once again the police far exceeded their authority in their attempts to "settle the strike."

The scene moves to the new industrial south where in 1929 we find the police upholding the best traditions of western Pennsylvania, Massachusetts, and New Jersey. Frederick Nelson of the editorial staff of the *Baltimore Sun* reports as follows: "This strange lack of proportion pervades the whole attitude of North Carolina toward this labor disturbance. At Marion, where a sheriff and his deputies ruthlessly shot down more than a score of strikers, who do not appear to have been armed, Judge Harding sat in a court of inquiry, and eventually held some of the deputies for the Grand Jury. But although he addressed a few conventional re-

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<sup>58</sup> S. A. Shaw, "Closed Towns," *Survey*, 43:62 (Nov. 8, 1919). It is worthy of note that in this same article Miss Shaw states that "in the Westinghouse strike of 1915, they [the state police] behaved admirably."

<sup>59</sup> *Christian Century*, 43:968-969 (Aug. 5, 1926).

bukes to violence as a glittering generality, he was positively catonic in his denunciation of the horrid crime of standing at a mill gate at six in the morning and urging honest toilers to refuse to go to their toil. Sheriff Atkins and his brave deputies had covered the street with writhing figures. Six strikers have died. The evidence of provocation was so nebulous that the whole episode must stand as little short of deliberate assassination. Yet it was the 'right of men' to work which most concerned Judge Harding after he had listened to the brutal story."<sup>60</sup>

It is true that officers of the law also suffered. A police chief was killed, and for this crime seven men were convicted and sentenced to long terms in prison; but when Ella May Wiggins, the "poet laureate of the union," was killed no one was even indicted. The situation is summed up by G. W. Johnson of the Baltimore *Evening Sun*, "If they arm themselves and resist, as they did at Gastonia, they get seventeen years in the penitentiary. If they do not arm, and resist, as they did at Marion, they are shot down by the police. If they go unarmed and make no effort to resist they may still be killed on the public highway. That is how Mrs. Wiggins died."<sup>61</sup>

The New Deal has changed many things in the field of labor relations but apparently police brutality in labor disputes is not one of them. Well in line with past records was the Chicago Memorial Day incident in 1937 when 10 people were killed and 90 were injured when the police dispersed a group of union sympathizers who were approaching the plants of the Republic Steel Corporation. In this case a Paramount news reel shows clearly that there was no evidence of physical threats made by the strikers or of the frenzied disorder which the police described. A Senate subcommittee concluded its study of this particular example of police brutality with this statement: "We conclude that the consequence of the Memorial Day encounter were clearly avoidable by the police. The action of the responsible authorities in setting the seal of their approval upon the conduct of the police not only fails to place responsibility where responsibility properly belongs but will invite the repetition of similar incidents in the future."<sup>62</sup>

It could not be expected, surely, that the record of the police and of government officials in strike areas would inspire labor with a firm con-

<sup>60</sup> Frederick Nelson, "North Carolina Justice," *New Republic*, 60:314 (Nov. 6, 1929).

<sup>61</sup> *Ibid.*

<sup>62</sup> U. S. Senate, Committee on Education and Labor, Subcommittee on Violations of Free Speech and the Rights of Labor (75th Cong., 1st Sess., *Senate Report No. 46*, Pt. 2).



fidence in their impartiality and their sound judgment as supervisors of labor struggles. They have performed admirably on some occasions, particularly the federal troops. But in the light of their record as a whole labor seems to be fully justified in its distrust of the government's performance of the police function. Particularly is this true of the government's policy of granting to companies the right to organize their own police with power to arrest. The government must bear the whole blame for this practice, because the companies could not be expected to forego any opportunity to preserve their own property, especially since the government has sometimes failed, especially in isolated areas, to furnish the needed protection.

The use of police to restrict organization campaigns has been widespread in the past. So-called law and order groups acting often with the sanction if not the active support of the police, would by threat of violence force an organizer to leave town. Such activities now come under the jurisdiction of the Labor Relations Board and have been prohibited as unfair labor practices. To be sure such high-handed procedure has always been outside the law but labor has found it very difficult to get justice for their organizers when city officials and the police joined together to repudiate justice by permitting vigilante methods.

## CHAPTER XVII

### THE STATE AND THE INDUSTRIAL CONFLICT

(Concluded)

#### SETTLEMENT OF DISPUTES

THE state participates in the industrial conflict not only negatively by setting definite limitations upon the antagonists in the struggle, but positively by attempting on occasion to bring about a settlement of the disputes which are continually arising. To carry out this program of the development of peace in industry four main methods have been devised: mediation or conciliation, voluntary arbitration, compulsory investigation, and compulsory arbitration.

Essential to a discussion of these activities is a clear idea of the meaning of each.<sup>1</sup> For practical purposes mediation and conciliation may be used interchangeably. They both involve the bringing together of the disputants for the purpose of arriving at a peaceable settlement by discussion. According to the latter method the two parties come together of their own desire, whereas according to the former some outside agency uses its good offices to bring them together. The difference is not great enough to warrant a separate treatment of the two methods. They are based upon the same principle, that of the discussing of differences in conference with a view to arriving at a peaceful settlement.

In all cases the mediator is merely an adviser. He never takes sides and he never commits himself to any opinion regarding the merits of the dispute. His function and his sole function is to bring the two parties together and to get them to arrive at an agreement. Sometimes they have not talked the matter over at all and once they have discussed the issues will find themselves in substantial accord. At other times both sides, in the interests of maintaining their own bargaining power, will refuse to make known what their utmost concessions will be. This sets the stage for the mediator, who, if he has succeeded in gaining their confidence, can now perform a most useful function. One thing he must sedulously avoid and

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<sup>1</sup> The definitions used are essentially those given by Commons and Andrews in their *Principles of Labor Legislation*.

that is the use of force of any kind, even the force of public opinion, else he is apt to lose any power for usefulness that he may have had.

Frequently the parties are unable to reach a settlement between themselves or with the services of a mediator. They simply cannot see eye to eye about the matters under dispute. In such event they may agree between themselves or as the result of the mediator's counsel to submit their dispute to a third party and to abide by his decision. This is called voluntary arbitration. In arbitration the complete process is as follows: (1) submission of the dispute to the decision of a third party; (2) submission to investigation; (3) refraining from strike or lockout pending investigation; (4) drawing up an award; (5) enforcing of the award and refraining from strike or lockout during its life.<sup>2</sup> The thing that sets a case of arbitration off as voluntary is the first step: the willing submission of the dispute to a third party. It may be that after this is done the government will step in and use compulsion, but the arbitration will still be voluntary. The law will read that parties who submit their dispute to arbitration must abide by the decision. In voluntarily submitting their dispute under these conditions, they are voluntarily agreeing to have the government enforce the decision.

Sometimes an investigation is prosecuted by the government or by some agency representing it either at the request of one of the disputing parties or on the initiative of the government itself. When this is done without the consent of both the disputants, it is known as compulsory investigation. Sometimes the parties are required to refrain from strike or lockout during the period of investigation, in which case there exists what is called a compulsory waiting period.

Finally, the government now and then, directly or indirectly, requires the disputing parties to submit their dispute to a third party for decision. This is compulsory arbitration. *Complete* compulsory arbitration does not exist unless compulsion is applied in all five steps with penalties attached for failure of either party to comply at any point in the procedure. During the Second World War industry and labor were subject to complete compulsory arbitration in that plant seizure and other sanctions were invoked when the decisions of the War Labor Board were not followed.

As we go on to consider these various methods of settling industrial disputes we shall give some attention to the experience of other countries than our own. We shall do this not with any thought of making a detailed analysis of foreign experience with these procedures, but simply to obtain

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<sup>2</sup> John R. Commons and John B. Andrews, *Principles of Labor Legislation* (Harpers, 1936), p. 431.

some estimate of the relative progress which the United States has made thus far. It also seems best to discuss conciliation and voluntary arbitration together. The two methods are very closely related and they frequently function hand in hand. The mediator succeeds in bringing the parties together or they get together themselves, and then sometimes they agree to arbitrate, thus effecting a combination of conciliation and voluntary arbitration.

(a) *Conciliation and Voluntary Arbitration*

Conciliation and voluntary arbitration have developed farthest in Great Britain. Modern legislation along this line began in 1896; which does not mean, of course, that the Conciliation Act passed in that year inaugurated the use of conciliation in industrial disputes. The Act of 1896 was really a codification of existing practices that had been in use in England for a number of years. It cancelled all the old conciliation acts, which had long since become dead letters, and gave to the Board of Trade certain powers of mediation. (In 1916 the labor functions were transferred to the newly created Ministry of Labor.) It provided for the voluntary registration of private boards of conciliation and arbitration, but such registration seldom took place.

Its most important provisions are those which call for the participation of the Board in the settling of disputes. If a difference arises between an employer and his employees, the Board (since 1916 the Ministry of Labor) may inquire into the causes and circumstances of the difference and attempt to bring the parties together; and on application of one of these and after having taken due account of the means available for conciliation in the district or trade, it may appoint a person or persons to act as conciliator or as a board of conciliation. During the period 1896 to 1913 some 696 cases were dealt with, 345 involving a stoppage of work and 351 involving no stoppage. Before the war, we observe, legislation in Great Britain concerning arbitration and conciliation was altogether permissive. The exigencies of the First World War seemed to call for some kind of coercion in the settling of disputes and to this end a number of acts were passed which met with varying degrees of success.

Following the war, Great Britain largely abandoned her use of compulsion in the settling of industrial disputes and redefined her position on a voluntary basis in the Industrial Courts Act of 1919. By the provisions of this act, employers and employees are encouraged to settle their own differences without resort to government interference; but if the concilia-

tive resources of the trade become exhausted resort may be had to arbitration, which under the act is in all cases purely voluntary. There is a permanent board of arbitration consisting of persons appointed by the Minister of Labor, the function of which is to settle disputes upon the consent of both parties concerned. Also courts of inquiry are established whose function is to make an immediate investigation of any existing disputes and then to give to the public an impartial report of their findings. This court is also appointed by the Ministry of Labor and may consist of one person or of several persons. It has the power to compel witnesses to appear before it and may demand access to all documents, but it may not publish information so gathered without the consent of the parties concerned.

In the United States the situation is greatly complicated by the existence of the two jurisdictions, state and federal. Legislation providing for the settlement of industrial disputes has been enacted by a majority of the states, and a number of these have established permanent boards for arbitration and conciliation. Practically all of the states having these boards provide that both employers and employees shall be represented on them. In some states the labor commissioner acts as mediator, and in others having industrial commissions a chief mediator is appointed. Some states stipulate that coercion shall be applied when arbitration has been agreed upon by both parties. About a dozen states enforce the award following voluntary submission of the dispute to arbitration. In many states a voluntary agreement to arbitrate must contain a promise to abstain from striking or locking out during arbitration proceedings.

Except for the laws and executive orders setting up the National War Labor Board federal legislation in this field is largely confined, as might be expected, to interstate commerce carriers. Six acts in all have been passed: the Act of 1888; the Act of 1898 (the Erdman Act); the Act of 1913 (the Newlands Act); Section 8 of the act creating the Department of Labor, also passed in 1913; Title 111 of the Transportation Act of 1920; the Act of 1926; and the Railway Labor Act of 1934. The first act, passed in 1888, called for voluntary arbitration, compulsory investigation, and publication of decision upon the initiative of the President. Under the provisions of this act the President might appoint two commissioners who with the United States Commissioner of Labor were to investigate controversies and prepare reports to be published. During the entire period in which this act was on the statute books the arbitration provision was never utilized. Only once was an investigation committee appointed—in connection with the Pullman strike of 1894—and the commission took no action toward settling the strike.

The Erdman Act repealing the Act of 1888 was passed in 1898. It applied specifically to transport workers, and was limited to engineers, firemen, conductors, trainmen, switchmen, and telegraphers. In the event of a dispute the chairman of the Interstate Commerce Commission and the United States Commissioner of Labor were required, on the application of either party, to try to settle the dispute by mediation. If mediation failed they were required to use their offices to bring the case to arbitration. Upon the consent of both parties to arbitrate, a board composed of three members was to be formed, each party choosing one representative and these two nominating a third. In case of failure to agree upon a third this member was to be selected by the Commissioner. The award of the board was made binding and the arbitrators were given powers of compulsory investigation. In actual practice the arbitration features proved to have relatively little significance. During the whole life of the act only twelve cases were submitted to arbitration, although it should be added that no case of actual breach of an award is reported. Between 1898 and 1902, 48 applications for mediation or arbitration were received. Four disputes were submitted directly to arbitration, and of the 44 in which mediation was invoked, only eight ultimately went to arbitration. Most of the applications were entered in the latter part of the period. As a matter of fact, from 1906 on there was no serious strike or threat of serious strike which did not bring one of the parties to the government seeking a settlement under the terms of the act.

In 1913 the Erdman Act was replaced by the Newlands Act. This act provided for the appointment by the President of a Commissioner of Mediation and Conciliation for a term of seven years. The President was also called upon to designate two other governmental officials, the three to constitute the United States Board of Mediation and Conciliation. The procedure was prescribed in less detail than in previous acts, but the duties of the Board were much the same. The Newlands Act did not last long. It broke down in 1916 when a concerted effort was made by the four railroad brotherhoods to obtain the eight-hour day, practically forcing Congress to pass the Adamson Act establishing the basic-eight hour day for railroad employees.

The Transportation Act of 1920 contained some rather significant labor provisions. Disputes were to be handled in the following manner. When at all possible the controversy was to be settled in a conference representing both sides. Two kinds of disputes might arise: (1) those connected with the making of the contract; (2) those resulting from the interpretation of the terms of the contract. When any of the latter could not be taken

care of by means of a conference, they had to go before boards of adjustment which were to be established by agreement between any railroad or group of railroads and its employees. A final court for the settlement of both kinds of disputes was provided in the form of the Railroad Labor Board, to be composed of nine members, equally representative of workmen, employers, and the public. The term of office was to be five years. Disputes might be referred to the Board directly or after they had failed of settlement by a board of adjustment. The Board had no power to enforce its awards on the disputants.

Following the First World War the railroads made serious efforts, many of them successful, to lower the costs of operation. Especially was this true of the labor cost, which was by far the largest single item of expense. Many bitter controversies between the railroads and their employees resulted. The period during which the Railroad Labor Board was in existence was particularly marked by rancorous quarrels. One of these had to do with the question of creating the adjustment boards provided for under the 1920 act. The unions were willing to cooperate in forming the boards but insisted that they be national. The railroad officials were opposed to national boards and were just as insistent upon making them local. The result was that for a long time no adjustment boards were established at all. This really worked to the advantage of the employees because of the provision that disputes not settled by adjustment boards were to be referred to the Labor Board. But it placed an overwhelming burden of work on the shoulders of the Labor Board, and eventually some adjustment boards were established.

Although the Railroad Labor Board was a court of final appeal its decisions were not mandatory, and in a number of instances it was defied by the unions and the railroad companies. One essential weakness of the Board was its partisan nature. Throughout most of the hearings the partisan point of view was dominant and members who tried to be disinterested were regarded by their groups as disloyal. The situation got so bad that the members of the Board in their dissenting opinions attacked not only the ideas and judgments of their colleagues but their personal characters. Gradually both the employees and the railroad companies lost confidence in the Board and it became clear that a change would have to be made.

Finally in 1926 the labor provisions of the Transportation Act of 1920 were superseded by the Watson-Parker Act. This act attempted to restore the former method of direct negotiation between the railroads and the unions on general terms of employment, and also made provision for the

establishment of boards of adjustment for particular grievances. To handle disputes which got beyond the parties or beyond the board of adjustment, provision was made for a Federal Board of Mediation to be appointed by the President. The Federal Board may take the initiative and act as mediator. Mediation failing and both parties consenting, resort may be had to arbitration, with the assistance of the Board. If both parties agree to arbitrate, and if they actually engage in arbitration, the award is to be mandatory and enforceable. If mediation fails and the proposal to arbitrate is rejected, the President may appoint a commission of investigation which may merely investigate the dispute and give publicity to its findings. It cannot hand down a binding award. The law further provides that no change in the conditions out of which the dispute arose may be made either by the railroad or by the employees during the thirty days provided for investigation by the commission or the thirty days following the submission of the report. This seems to mean among other things that the employees may not strike, inasmuch as a strike would surely change conditions. By the same reasoning the employers are also restricted in their use of coercive measures during these thirty-day periods.

Up to the present time the Act of 1926 has apparently functioned exceedingly well. The bitterness between the two major parties that marked the regime of the Railroad Labor Board has not reappeared to any extent since 1926. Although conditions were somewhat more favorable than during the years immediately following the First World War, success has undoubtedly been due in the main to the fact that both parties were fairly well satisfied with the provisions of the act when they went into effect. The decision of the Supreme Court in the *Railway Clerks* case,<sup>3</sup> which held that the railroads may not organize company unions for the purpose of obtaining control of the negotiations, strengthened labor's position considerably.

As a result of the enactment of the Railway Labor Act of 1934 several amendments were added to the Act of 1926 and an elaborate system of adjusting disputes has been set up. A new National Mediation Board takes the place of the old Board of Mediation and is empowered to mediate disputes concerning rates of pay, rules, working conditions, or any other matter that cannot be settled otherwise. The Mediation Board, with the consent of both parties, may assist in carrying the matter to arbitration if mediation fails. A much more important change is the establishment of a National Railroad Adjustment Board. This Board is composed of thirty-

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<sup>3</sup> *Texas and New Orleans Railroad Co. v. Brotherhood of Railway and Steamship Clerks*, 281 U. S. 548 (1930).



six members and is divided into four divisions, each division having jurisdiction over a certain group of employees. The Board has jurisdiction only in grievances and disputes arising out of the interpretation and application of existing agreements, and not in disputes over *changing* the rates of pay, rules, or working conditions. In case of deadlock an impartial referee is to be added to the divisional board. This referee is to be selected by the divisional board itself, but in case of failure to agree upon a selection he is to be appointed by the Mediation Board. The awards of the several divisions of the Adjustment Board are to be final and binding. At its discretion any division of the Board may establish regional adjustment boards to act in its place for such limited period as it may deem necessary. There are also provisions for the voluntary setting up of regional adjustment boards.

The most important agency for settling disputes in industry other than in the transportation industry is the conciliation service of the Department of Labor. When first established the service was not particularly successful, but it has gradually won the confidence of employers and employees until today it is the most important agency in the country for the mediation and conciliation of labor disputes. According to the reports of the Secretary of Labor, it has been successful in more than 75 per cent of the cases in which it has functioned. United States labor conciliators now enter practically all important labor disputes in the country. To a very large extent they have supplanted state arbitration boards, with the latter's consent, and they function successfully in that field.

During the First World War the federal government placed great reliance on conciliation and mediation in labor disputes, setting up a separate board for each of the large governmentally operated industries and a National Labor Board to handle disputes in essential war industries which lay outside the jurisdiction of any special board. Although compulsory arbitration was not formally stipulated in the creation of these boards, a great deal of compulsion could be used, and was used, through the power of granting or withholding government contracts according to whether the method of handling labor disputes was satisfactory to the government. There were a great many strikes; but in general it can be stated that the boards accomplished their purpose, because the strikes did not seriously interfere with the prosecution of the war.

During the Second World War a similar procedure has been put in operation. During the period immediately preceding the outbreak of the war the National Defense Mediation Board was established. To this board were submitted disputes which the mediation service of the Department of Labor could not settle. There was no compulsion in the acceptance

of the award of the Board except the very real compulsion of public opinion aroused by the President's declaration of a state of national emergency.

Shortly after the war actually began the President appointed the National War Labor Board to take over the functions of the Defense Mediation Board and to carry out the presidential promulgation and the agreement of the leaders of management and labor that no strikes or lock-outs would be tolerated for the duration of the war, and that all labor disputes should be settled by peaceful means. The proclamation setting up the board provided for the use of the existing conciliation service of the labor department, then the settlement of the dispute by the Labor Board. Having taken jurisdiction the Board was authorized to settle the dispute by whatever method it selected. Usually the Board itself gave a decision but sometimes the dispute was returned to the parties with the Board's order to arbitrate. Most of the decisions were obeyed but the Board did not hesitate to ask the President to seize a plant of a recalcitrant employer or of one whose workers remained adamant in the face of a Board order.

The Board's jurisdiction was never clearly established either by presidential proclamation or by act of Congress. Nevertheless it is quite clear that during the war in any industry doing war work there was in reality a situation of compulsory arbitration and compulsory acceptance of the award.

Of increasing importance in the settlement of disputes arising under collective bargaining contracts is the work of the American Arbitration Association. Founded in 1926 to provide for the orderly arbitration of commercial disputes, this nonprofit association has recently expanded its activities to the field of industrial disputes. An increasingly large number of collective bargaining contracts mention the Association as the arbitrator when other methods of collective bargaining have failed. From its panels of certified arbitrators who serve without pay or publicity, the union and the management select a person or persons to give a decision. All of the hearings are held under procedures of arbitration developed by the association and state legislatures and for the service company and union pay a fee to cover the expenses. This program, to be sure, is outside the governmental agencies but there is complete cooperation with the conciliation service of the labor department and with the War Labor Board.

### *(b) Compulsory Investigation*

An interesting development in the domain of adjustment of industrial disputes was the enactment of the Canadian Industrial Disputes Act of 1907. The act is not general, applying only to public utilities and mines,

but it may be used for the settlement of disputes in other industries on application of both parties. Its principal provisions are as follows. Employers are prohibited from instituting a lockout and employees from calling a strike until the dispute has been investigated by a government board appointed for this purpose. Following these proceedings either party may refuse to accept the findings and call a strike or a lockout. In other words, the act provides for a compulsory waiting period during the process of investigation. Thirty days' notice must be given if a change is to be made in hours or wages in the industries covered by the act.

Either party to a dispute may apply to the Dominion Department of Labor for a board of conciliation and investigation, whereupon the Minister of Labor appoints a board of three members. The employees nominate one, the employers one, and these two nominate a third member. If they cannot agree, the government appoints the third member. These three persons then proceed to conduct an investigation of the dispute. Both the majority and the minority reports, if there are two, may be published by the government. It was originally thought that this feature of the act could be most important because of the power of public opinion, but in actual practice it is seldom utilized. The boards strive to make publication unnecessary because it is felt that the disputes can be handled more amicably in private. Penalties in the form of fines may be imposed for the calling of strikes and lockouts during the period of investigation but are seldom applied.

In 1923 the constitutionality of the act was questioned and in 1925 the Privy Council found it invalid on the ground that it contained provisions authorizing action by the federal authorities in cases which were within the legislative jurisdiction of the several provinces and not under the control of the Dominion Province. The act was immediately amended to include only those cases which lie outside the jurisdiction of the provinces. An effort was made to continue the original coverage of the act by suggesting that each province pass a law giving the Dominion Minister of Labor the right to take care of all the intra-provincial disputes in industries originally covered by the act, and most of the provinces have done this.

In general the act has been a success. During the period 1907 to 1935, a total of 819 disputes was handled under it and in about 90 per cent of these cases a strike was averted or ended. In a great number of cases, 657 in public utilities, the act was ignored. The coal industry was largely responsible for this partial failure, owing to numerous factors, one of which was the fight waged by the various labor organizations to obtain the allegiance of the miners. Although dissatisfied at first, labor has since

become quite friendly toward the act; and the employers, while less enthusiastic, are favorable, although not desirous of seeing it extended to include all industries.

The success that has attended this act seems to have been due to its having been interpreted as a conciliatory measure rather than a coercive one. In perhaps the most exhaustive study of it that has yet been made, Mr. Ben M. Selekman concludes, "The success it has won in averting and settling disputes represents a triumph for intervention on a voluntary basis as contrasted with a compulsory one."<sup>4</sup>

In the United States the first serious attempt to put compulsory investigation of industrial disputes into effect was made in 1915 when Colorado enacted its Industrial Commission Act. This act is modeled after the Canadian act, and is the only one of a score or more state acts providing for compulsory investigation that contains the Canadian provision forbidding strikes or lockouts in certain specified industries pending investigation. It empowers the Industrial Commission to compel hearings and to render awards, which, however, are not binding upon the parties concerned. The Colorado act is more comprehensive than the Canadian act in that it covers not only workers in public utilities and mines but all employees whatsoever except those in domestic service, agriculture, and establishments employing less than four workers.

There has been much debate concerning the accomplishments of the act. This is not surprising when we remember that Colorado has been the scene of some of the fiercest industrial struggles in the history of the country. Some have contended that the Commission has not been the impartial body that was anticipated, that it has shown an unmistakable bias in favor of the employer; also that the trade unions have been seriously hampered by restrictions placed upon their right to strike while the employers have suffered little or no loss as a result of the restrictions on their right to lock out. On the other hand, there are many who maintain that the act has succeeded in averting a good deal of strife. When the functioning of the act is analyzed, the Commission does appear to have been somewhat slow and inefficient; and the perhaps unavoidable failure to prevent or even attempt to prevent the employers from preparing for a strike during the compulsory waiting period has given the workers a real cause for complaint. Nevertheless the act is to be commended if for no other reason than that it is an interesting experiment. The omission from the other state acts

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<sup>4</sup> Ben M. Selekman, *Postponing Strikes* (Russell Sage Foundation, 1927), p. 315. See also by the same author *Law and Labor Relations: A Study of the Industrial Disputes Investigation Act of Canada* (Harvard University, Bureau of Business Research Study No. 14, 1936).

of the compulsory waiting period sets them off from the Colorado law and removes organized labor's main objection.<sup>5</sup>

(c) *Compulsory Arbitration*

Compulsory arbitration has been most extensively tried out in Australia and New Zealand. The New Zealand act was passed in 1894 and went into effect in 1895. It provided for one court of arbitration and for district boards of consultation, these latter being composed of an equal number of representatives of employers and employees nominated by registered unions of employers and employees in the district. The arbitration court consisted of one supreme court judge assisted by one member chosen by each group. Only unions registered under the act could lawfully make demands upon either of the boards.

The conciliation system was changed in 1908 to permit representation by trades rather than by districts. The act was also modified later to enable individual employers to appeal to the boards. All strikes were illegal for registered unions. The arbitration court possessed powers of compulsory investigation and could also compel the attendance of witnesses and the submission of all necessary information. The awards could be made applicable to the entire industry. Union preference was usually granted, particularly when it could be shown that the union had a strong organization before the dispute started; i.e., the employer was required to discharge a non-union man in favor of an unemployed union man. This practically amounted to the closed shop.

Until 1906, under conditions of rising prices, the act functioned smoothly. During that period the employers did not appeal to the court and inasmuch as registration was voluntary on both sides and could be withdrawn on short notice, the practical effect of the plan was to give the employees access to voluntary arbitration with an enforceable award. The illegal strikes of 1907-1908, however, caused the government to incorporate in the law some of the features of the Canadian Industrial Disputes Act, and since then there have been a number of illegal strikes in spite of the persistent enforcement of a system of moderate fines. New Zealand has not been a strikeless country. In addition to the illegal strikes there have been a great many legal ones called by unregistered unions. Doubtless the number was increased, particularly before the past depression, by the

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<sup>5</sup> The Railway Labor Act of 1926, discussed in connection with mediation in the railroad industry also provides for compulsory waiting periods.

inability of the court to review wage awards fast enough to keep pace with the increased cost of living.

On April 8, 1932, New Zealand passed an act amending the conciliation act in such a way as to abolish practically all the compulsory features. The only important respect in which compulsion was retained was that any organization of female workers had the right to approach the arbitration court for an award fixing the basic wage in its industry. The arbitration court was retained but considered only disputes voluntarily submitted after the failure of conciliation. The reason given by the government for the abandonment of compulsory arbitration was that the rigid fixing of wages, hours, and other industrial conditions had become a serious obstacle in the way of national recovery. With the return of the labor government to power in 1935, the 1932 amendment was removed and the compulsory features once again added, this time in an even more sweeping form.

Australia's experience with compulsory arbitration has differed from that of New Zealand in several respects. In the first place, there has been in existence during the entire period of the experiment a large and powerful labor party. Then, too, compulsory arbitration and wage boards have grown up together and in some states have merged. Finally, owing to its political organization Australia has had both federal and state courts of arbitration.

The first coercive measures were adopted by the two largest states in the Commonwealth, Victoria and New South Wales. Victoria enacted the first of its wage-board laws in 1896 and New South Wales adopted its first plan of compulsory arbitration in 1901. The Victoria law applied to both sexes but only to industries paying notoriously low wages. A wage board having the power to fix wages, hours, and a few other conditions of employment, and consisting of a chairman with an equal number of representatives of employers and employees, was established in each industry. Wage boards were later formed in other industries where conditions were much better, sometimes at the instance of the employers. In general, the employers have favored the law because it is a method of protecting conscientious employers from unscrupulous ones. The industrial situation has probably been more satisfactory in Victoria than in any other state of the Commonwealth.

New South Wales has had a different experience. Strikes were exceedingly numerous before the compulsory arbitration act was passed and they have remained so. The act of 1901 provided for a single court having final jurisdiction in all matters within the scope of the act. A salient feature was the provision that the consent of the court must be obtained

before prosecution could take place for a violation in the form of a strike or a lockout. The act continued in force until 1908 when it was supplanted by a system of wage boards similar to the Victoria system except that very severe penalties were attached. This system was put into effect by an anti-labor ministry, and when the labor party came back into power in 1912 the severe penalties were withdrawn and the mine workers were provided with special conciliation boards. A new law, still in operation, was enacted in 1918. The severe penalties were not restored but the wage boards system was, and strikes in the mining, railroad, and public utilities industries remained illegal. Despite this, strikes continue to occur in all the important industries. Undoubtedly one of the main reasons for the continuance of compulsory arbitration is that there is a strong labor party. Legal coercion can be applied much more effectively to employers than to employees.

In 1904 the Commonwealth itself took official cognizance of the industrial situation by passing the Industrial Arbitration Act, which was somewhat similar to the original New South Wales law. It did not provide for a system of wage boards but established a single court of arbitration of which the president was the sole member. The decisions of this court are final with the qualification that it may submit cases to the Supreme Court of the Commonwealth for advice. The consent of the court must be obtained before prosecution can be started against anyone for a strike or a lockout; but as permission has never been granted in the case of a strike, the law amounts to little more than a minimum-wage regulation. The court has power over "disputes extending beyond the limits of one state."

Great doubt existed as to what constituted a dispute beyond the limits of one state, and a subsequent amendment granted to a justice of the high court the power to decide which disputes should fall under the jurisdiction of the Commonwealth's arbitration court. Later the Commonwealth gave the laborers the right to bargain for wages above the minimum if they felt that the minimum wage was not high enough. It also empowered the court to appoint boards of reference which should encourage the meeting of employers and employees to iron out their differences. A most significant change was made in 1920 when Parliament passed legislation enabling the government to appoint special temporary tribunals for the settlement of particular disputes without recourse to the Commonwealth arbitration court. Justice Higgins, who had been president of this court for a period of fourteen years, resigned in protest against the change. In his statement Justice Higgins objected to the new law on the ground that in the absence of a coordinating authority there would be much inconsistency in the awards made and this would only lead to more disputes.

Until the Second World War the only experiment in compulsory arbitration that has yet been made in the United States was begun in 1920 when the state of Kansas enacted a law establishing an industrial relations court. This court has since been abolished, but its significance remains because no other experiment of the kind has ever been tried in this country. Growing out of a serious coal strike, the law called for compulsory arbitration in certain industries—public utilities and industries producing such necessities as fuel, clothing, and food. The court consisted of three judges appointed by the governor for a term of three years. In any case of industrial controversy an investigation might be made by the court on its own initiative or on the complaint of either party, or the attorney general, or an interested citizen. After completing its investigation the court had the power to prescribe rules and regulations, hours of labor, working conditions, and wages. After sixty days' compliance with the order either party to the controversy had the right to apply for a modification if it felt it had been treated unjustly. The court was then required to grant a hearing and modify the order if necessary.

The court was empowered to bring suit in the Supreme Court of the state for defiance of its orders. Penalties for violation were also stipulated. The penalty for a person violating any provision of the act was to be a fine not exceeding \$1000 or imprisonment not exceeding one year or both, whereas officers guilty of violation could be fined not more than \$5000 or imprisoned for not more than two years or both. Several union leaders were sentenced under this clause, the best known being Alexander Howat, later president of the insurgent United Mine Workers of America. The court was given the power to take over and operate the industry itself in the event that operation was suspended, a fair return being guaranteed to the company and to the employees. The right of labor to organize and to bargain collectively was specifically recognized, although according to organized labor it was stripped of all significance. Strikes, lockouts, picketing, boycotts, and all other acts of war were prohibited in the industries covered. The employer, of course, retained his right of individual discharge, and the employees their right to quit work as individuals but not their right to quit in an organized way or to induce others to quit.

The act was one of the most insistently litigated pieces of legislation in this country in recent years. It was declared constitutional by the Supreme Court of the state but did not fare so well at the hands of the United States Supreme Court, which in the *Wolff Packing* case (1923) held unconstitutional the provision undertaking to give the court power to fix wages, at least so far as industries not classed as public utilities were concerned. The



Court held that the fixing of wages in industries other than those affected with the public interest was not consistent with the Fourteenth Amendment. Again in 1925 it passed on the constitutionality of the court. Again it was the Wolff Packing Company protesting and again the decision was unfavorable to the court, declaring unconstitutional the fixing of hours of work in an industry such as meat packing which was not affected with the public interest. In the eyes of the Supreme Court this constituted an infringement of the liberty of contract and the rights of property guaranteed by the due process clause of the Fourteenth Amendment to the constitution. As a result of these decisions it became clear that because of constitutional limitations compulsory arbitration could not be practiced in the United States in industries not affected with the public interest. The right was not denied in the case of public utilities.

Not only did the court meet constitutional difficulties but it was opposed by organized labor groups in general. Organized labor in the United States has consistently opposed compulsory arbitration, largely on the ground that it takes away the right to strike. Also it has always been the general policy of labor, particularly as represented by the A. F. of L., to oppose the fixing of hours and wages by the state except in unusual circumstances. Labor has always contended that it preferred to fight its own battles. The unions opposed the Kansas law from the very beginning and some union leaders openly defied it after it was enacted. Many employers, too, were unfriendly, and it was a member of the employer group who finally raised the question of constitutionality and won the cases.

As a result of all this opposition, judicial and the rest, the court was abolished in 1923 and its duties and powers were transferred in a limited form to the public service commission. This commission is still functioning with the usual powers of investigation and publicity. The people of the United States are apparently not in a mood to experiment with compulsory arbitration. As we have seen earlier in the chapter, however, compulsory arbitration in fact if not in name was the rule during the period of the Second World War.

#### *(d) Settlement of Disputes Under N.I.R.A.*

No discussion of the part of the government in settling labor disputes would be complete without a brief survey of the many labor boards that developed during the early years of the New Deal before the national labor policy crystallized into the National Labor Relations Board.

With the passage of the National Industrial Recovery Act in 1933 the government was forced to take some action for the enforcement of Section 7(a) of that act which provided that workers could organize and bargain collectively through representatives of their own choosing without interference by their employers. Probably the most important boards set up under the N. I. R. A. legislation were the National Labor Board and its successors the old National Labor Relations Board, the Petroleum Labor Policies Board, and special boards set up in the three major industries—automobiles, steel, and textiles.

As a result of the joint request of the Labor and the Industrial Advisory Boards of the N. R. A., the President created the National Labor Board on August 5, 1933. The Board was originally composed of seven members, Walter C. Teagle, Gerard Swope, and Louis Kirstein representing industry, and William Green, John L. Lewis, and Leo Wolman representing labor, with Senator Wagner serving as chairman. In the beginning the Board was limited to the consideration of cases arising "through differing interpretations of the President's Re-employment Agreement,"<sup>6</sup> but it soon came to be regarded, as would be expected, as a general mediation board for industry.

Difficulties were not slow to present themselves. To begin with, the Board's legal status was somewhat in doubt. It came into being originally not as the result of any special statutory action but merely on request of the President and its powers were therefore somewhat shadowy. We are not surprised to find that its early work is marked by a timidity that certainly was not characteristic of its successor. The situation was somewhat improved when as a result of executive orders by the President the Board was empowered to mediate labor controversies tending to impede the purposes of the Recovery Act, to arbitrate cases submitted to it, and to organize regional labor boards and review their findings. It was also authorized to conduct plant elections to determine how employees wished to be represented in collective bargaining. In exercising this power the Board itself became involved in many controversies, particularly with employers. Another difficulty appeared in the shape of "jurisdictional controversies" between the Board and the N. R. A. It had not been made clear what relation the N. R. A. should bear to disputes arising in connection with the labor provisions of the N. I. R. A., and the result was that in some cases the Board and the N. R. A. would find that they were both trying to negotiate a settlement in the same dispute. This confusion was particularly unfortunate in the case of the automobile settlement. As time went on the

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<sup>6</sup> *Monthly Labor Review*, 37:553 (Sept., 1933).

Board acted with greater vigor and clarity, but composed as it was of extremely busy men with other major responsibilities it could not function with perfect smoothness and efficiency. The various labor boards which the government created under the jurisdiction of the N. R. A., as well as those outside it, have been discussed fully in a study published by the Brookings Institute.<sup>7</sup>

The cotton code provided for a board in the cotton industry, and so the Cotton Textile Industrial Relations Board was created. This Board was composed of a representative of the employers, a representative of labor (not a member of the United Textile Workers), and Robert Bruère the chairman. It was faced with an extremely difficult situation. The industry itself had for many years been torn by more than the usual amount of strife. Most of the workers were not in unions. And the owners on their side had been finding it very hard to make ends meet financially. The Board itself lacked sufficient funds and consequently could not carry on its investigations as thoroughly and as quickly as it desired. The United Textile Workers' Union was not antagonistic to the Board at first, indeed was somewhat favorable, but it changed front when the Board failed to act as quickly and decisively as the union men thought it should. In the circumstances it seemed best for the Board to go, particularly when the serious textile strike of the summer of 1934 remained unsettled after the Board's offer to serve as mediator was rejected by the union on the ground of lack of confidence.<sup>8</sup>

The Automobile Labor Board was set up under peculiar conditions. It was neither under the Code Authority nor the N. R. A. but was responsible directly to the President. In March, 1934, a strike threatened the automobile industry and the National Labor Board requested the disputants to come to Washington for a hearing. The two delegations consulted with both the National Labor Board and the Chief Administrator of the N. R. A. and finally agreed upon a settlement with the latter. The settlement, announced by the President, contained a provision for proportional representation and also provided for a board of three, responsible directly to the President, to hear and decide "all questions of representation, discharge and discrimination." Leo Wolman was made chairman and representative of the public; and Richard Byrd of the General Motors Truck plant, representing the employees, and Nicholas Kelley, counsel for the Chrysler Motor Car Corporation, representing the employers, were the other two mem-

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<sup>7</sup> Lewis L. Lorwin and Arthur Wubnig, *Labor Relations Boards* (Washington, the Brookings Institute, 1935).

<sup>8</sup> *Monthly Labor Review*, 39:1116 (Nov., 1934).

bers.<sup>9</sup> The Board had rough sailing from the start. The labor interests in particular were dissatisfied. They insisted that the Board had been timid and dilatory as well as discriminating in such decisions as it had made, and on January 24, 1935, the A. F. of L. unions announced their refusal to have further dealings with it. When President Roosevelt on January 31, 1935, renewed the automobile code without any change in the labor provisions, representatives of the A. F. of L. were extremely bitter in their criticism. The National Industrial Recovery Board had recommended the establishment "under the authority of the National Industrial Recovery Act and Public Resolution 44 of the last Session of Congress, a comprehensive Automobile Industry Labor Relations Board," but in spite of this recommendation, the Automobile Labor Board was made part of the code and Administration support of "proportional representation," in this instance at least, continued. Unquestionably the Board was greatly handicapped by the necessity of trying to enforce the proportional representation provision of the March agreement, but it is also true that it had to deal with one of the strongest open-shop employers' organizations in the country; and the fact that as late as 1933 the workers in this industry were almost entirely unorganized was an added difficulty.

The Petroleum Labor Policies Board was created in the early part of the New Deal period, mainly because the original board in that industry had as one of its labor representatives a member of the company union, and the trade-union representatives refused to sit with him. Secretary Ickes appointed the new board in December, 1933. It had three members, none of them definitely representing either industry or labor, and it functioned with at least a fair degree of success.<sup>10</sup>

Largely as a result of the efforts of Senator Wagner Congress considered anew the problem of adjusting labor disputes. The particular bill that Senator Wagner himself prepared failed to pass, but Public Resolution No. 44 did pass and the President signed it on June 19, 1934. This resolution specifically authorized the President to create boards to consider labor disputes arising under Section 7(a) and also disputes which might interfere with interstate commerce.<sup>11</sup> A number of boards were created under this resolution, some for special industries and another for all industries.

The first board set up was the Longshoremen's Board, created primarily to consider the questions involved in the San Francisco strike. Then the Steel Labor Relations Board was appointed as the result of a threatened

<sup>9</sup> *Ibid.*, 38:1061-1062 (May, 1934).

<sup>10</sup> *Ibid.*, 38:34 (Jan., 1934).

<sup>11</sup> *Ibid.*, 39:316 (Aug., 1934).

strike in the steel industry.<sup>12</sup> And on June 29, 1934, the National Labor Relations Board was appointed. Lloyd Garrison, Dean of Wisconsin Law School, was made chairman (he later resigned and was succeeded by Francis Biddle, prominent Philadelphia attorney, later Attorney General of the United States), and Harry A. Millis, Professor of Economics in the University of Chicago, and Edwin S. Smith, industrial relations expert, were appointed as the other two members. Following the Winant Committee Report on the textile strike, the Textile Labor Board was created.<sup>13</sup>

In general, these boards functioned much more satisfactorily than the previous boards which represented the various interests involved. Particularly was this true of the National Labor Relations Board, which dealt with its disputes both promptly and vigorously. Whether or not its decisions concerning Section 7(a) were correct from the standpoint of law, they were understandable by the lay mind and as a result the issues involved were clearly drawn. It must be kept in mind that none of these boards had enforcement functions. They administered and interpreted, but matters of enforcement were turned over either to the Compliance Division of the N. R. A. or to the Department of Justice. These two enforcement agencies did not show undue haste and the work of the board was largely nullified by lack of effective enforcement.

With the demise of the N. I. R. A. following the adverse Supreme Court decision these several boards were of course abolished. Some of their functions were taken over by the new National Labor Relations Board. It is interesting to note, however, that whereas the earlier boards combined the functions of settling disputes and enforcing the collective bargaining section of N. I. R. A., the present Labor Relations Board is not an organization for mediating and arbitrating but rather one for enforcing the stated policy of Congress with respect to collective bargaining.

#### (e) *An Evaluation*

An examination of the various methods which have been devised for the purpose of settling industrial disputes does not lead to any clearly defined conclusions with regard to their merits and demerits. Experience with some of them has been too limited to warrant deductions; and it must also be kept in mind that conditions in the various countries differ too widely to permit the drawing of wholesale conclusions from the experience of any one country. Industrial and political conditions in Australia, for example, are

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<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*, 39:871 (Oct., 1934).

so unlike our own conditions that even if we granted the success of compulsory arbitration there it would not necessarily follow that the same system would succeed to any degree at all in the United States. These limitations must be borne in mind in evaluating conciliation and arbitration of all kinds.

It is probably somewhat misleading to compare the merits of conciliation and voluntary arbitration because they are really different stages in the same process. We recall that where provision is made for voluntary arbitration it is usually expected that mediation and conciliation will be used first. Arbitration is resorted to only after all efforts to reach a settlement through mediation have failed. It is generally granted that mediation and conciliation are much more desirable than arbitration if they can be made to work. This is true in the very nature of the case. The two parties discuss the matters in dispute and consider the various possibilities of settlement and if they finally arrive at an agreement, it will be an agreement to whose terms they will already have assented. They will not necessarily be entirely pleased with it, as a matter of fact they probably will not be, because both sides will almost certainly have had to make concessions. But the point is that in the very process of reaching the settlement they will have reconciled themselves to these concessions and so will not have to make up their minds to them afterward.

Contrast this with what happens in arbitration. An outside party makes a study of the case and hands down an award. Meanwhile the two disputing parties, in total ignorance of what is going on in the mind of the arbitrator, so far from gaining each other's point of view are only growing the more fixed and impassioned in their own opinions. They have probably agreed to accept the award, in some jurisdictions they are compelled to do so; but they have not agreed to its particular terms and some of these will in all probability be highly displeasing to both sides. A wage rate of sixty cents an hour that the parties have arrived at in conference together is a very different matter from exactly the same wage rate handed down in an award by some outside party.

There are other obstacles in the way of the successful functioning of voluntary arbitration. The usual method of selecting a board is to have each of the two contending groups choose an equal number of representatives. Then these representatives select the impartial member or members, provision being made for some outside agency, often some state agency, to make the choice if they cannot agree. It is seen from the make-up of the board that the decision will rest with the impartial member or members. Now by definition the essential requisite of an impartial member is that he

be unbiased. Practically speaking this means that he must be ignorant of the whole question; and this means that many otherwise competent persons who happen to be familiar with the technical conditions in the industry are excluded.

A case in point occurred during the long jurisdictional controversy between the carpenters and the sheet-metal workers over the use of metal trim in construction work. The matter was submitted to arbitration. Both parties agreed to arbitrate and both agreed to abide by the decision. Judge Gaynor of New York was selected as arbitrator on the ground that he was impartial, in other words that he was uninformed concerning the question in dispute and concerning the technical conditions of the industry. When Judge Gaynor decided in favor of the carpenters, the sheet-metal workers promptly repudiated his award on the ground that he was technically unfit to render a decision!

Too often an arbitrator is selected because of his general popularity and in complete disregard of his lack of qualifications for handling the particular question in dispute. It is also unfortunate that once an arbitrator has rendered an important decision, he is usually considered unfit for further service in that capacity. Every decision made is either a compromise and therefore unsatisfactory to both sides, or else it favors one side and thereby becomes violently displeasing to the other. If the latter, the man is "prejudiced," he can no longer be regarded as an impartial judge and is henceforth barred from service as an arbitrator. As we have seen, the Amalgamated Clothing Workers' Union and a group of clothing employers have made a notable contribution to arbitration by substituting the "impartial chairman," a permanent official, as the impartial arbitrator. The use of an "impartial chairman" or a "permanent arbitrator" or an "umpire" has become increasingly popular in many industries. In 1944 the Bureau of Labor Statistics study revealed that 28 per cent of the workers employed under arbitration agreements are under permanent arbitrators.<sup>14</sup>

Perhaps the most important weakness of arbitration, voluntary or compulsory, remains to be mentioned. The experience of both Great Britain and the United States is to the effect that whereas conciliation has contributed greatly to the settling of industrial disputes, arbitration has proved to be far less satisfactory. Some of the reasons for this have already been set forth. But an examination of the nature of arbitration reveals a more serious weakness than any yet suggested, a weakness that seems to be in-

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<sup>14</sup> "Arbitration Provisions in Union Agreements," U. S. Bureau of Labor Statistics, *Bulletin No. 780* (1944).

herent. A distinction must be drawn between the making of an agreement and its interpretations. The latter is a judicial function, the former is not; and although there are obstacles in the way of developing a satisfactory system of interpreting industrial agreements, those obstacles are not insurmountable. The difficulty arises in this: that the arbitrator, who is essentially a judge with all the attributes of impartiality and detachment which belong to that office, is often called upon to perform a function that is not judicial. He is required to formulate the agreement.

It is one thing to determine what the wage clause in an agreement means and quite another thing to determine what it should say. For example, there is a great deal of talk about a "fair" wage, a "fair" profit, and "fairness" in other forms of income, but no principle for determining what a fair distribution of income is has been generally accepted as yet. Until that happens, organized labor's wage policy of "more and more now" cannot be seriously criticized as being out of harmony with the present method of distributing income and wealth. For under the present economic system is not income distributed according to the ability of individuals and groups to grasp it? How, then, can an arbitration board arrive at any wage award that can be expected to satisfy the laborers, except temporarily? For soon they will demand "more and more." And why should they not? This seems to be the essential weakness of arbitration, voluntarily or compulsory, as a means of settling industrial disputes. When the arbitrator really carries out a judicial function, however, in settling disputes arising under an agreement, the arbitration is more likely to succeed. This is particularly true when unions and management are used to dealing with each other and are perfectly satisfied so long as a decision is made.

Still other objections are raised to *compulsory* arbitration. One very great practical problem is how to enforce decisions, particularly against the labor group. Then a common charge brought by organized labor is that awards are made in accordance with the social philosophy of the group which is in control of the government, if not at times in accordance with the arbitrators' own selfish desires. These men, labor insists, are very apt to represent property interests. Until the government has given conclusive evidence that it will protect the interests of the wage-earning class as painstakingly as it does those of the property-owning class, labor will not let its right to strike be snatched away from it by compulsory arbitration or any other device for adjusting industrial disputes. The right to strike is essential to collective bargaining, and collective bargaining is the union's reason for existence. There is also the undesirability of using coercion to settle



anything. Disputes settled by coercion are too likely to get unsettled again in a week or a month.

Finally, as far as the United States is concerned, there is the very serious question as to whether compulsory arbitration is constitutional, at least in those industries which are not affected with the public interest. The decisions of the United States Supreme Court concerning the Kansas Court of Industrial Relations would seem to indicate that it is unconstitutional except when applied to public utilities. The federal government has not deemed it wise in the light of experience to use coercion to any great extent in the greatest public utility in the country, the railroad transportation system. Even in the Australian experiments, the compulsory arbitration features have become less prominent than the framers of the original acts seem to have anticipated.

So much for compulsory arbitration. In the field of investigation the use of coercion seems to hold out more promise. The conviction is growing on society as a whole that an industrial dispute concerns not merely the warring parties but very definitely the entire public as well. If this be true, then the public has at least a right to know the facts. Unquestionably both the employer and the employee groups are more and more appealing to the public for support and are realizing more and more that without public sympathy and approval their battle is half lost before it is begun. In the future, as in the recent past, publication of the facts in the case will undoubtedly have a deterring effect upon the contenders.

The wisdom of the compulsory waiting period is not so well established. As far as a single dispute is concerned, a compulsory investigation without a compulsory waiting period would have little efficacy in averting a strike. But if compulsory investigation were the rule rather than the exception, if the parties knew that a careful investigation by the government lay ahead, they might be less eager to start a struggle which would show them up in a bad light. At any rate, whatever its advantages, there seems to be some basis for the workers' objection to the compulsory waiting period. The strike is the most effective weapon they possess. Without it collective bargaining becomes worthless. And the strike, to be effective, must catch the employer unprepared. That is why the business agent in many trade unions is given the power to call strikes without consulting anybody. It is obvious that the employer can utilize a compulsory waiting period to prepare for a strike. That is the reason why labor has objected so strenuously to the compulsory waiting-period feature of the Canadian Industrial Disputes Act and also to that of the Colorado act, which is essentially the same as the Canadian act. The employer could hardly be expected to let the time go by

without making any preparation whatever. It must be admitted, on the other hand, that in making the disputants take time to cool off the waiting period does operate as an effective deterrent. At least the Canadian act seems to have been quite successful in that respect.

More and more the wisdom of allowing trade unions in industries affected with the public interest the unlimited right to strike is being questioned. The public has a legitimate claim on such industries and is seriously inconvenienced by a stoppage. On the other hand, the public's cry for protection against strikes involving public utilities will carry more conviction now that that same public has begun to take a real interest in the welfare of the workers in those industries.

## CHAPTER XVIII

### MEETING THE WAGE-EARNER'S GRIEVANCES

#### DEALING WITH UNEMPLOYMENT

THE present discussion will deal with the more direct remedies that have been tried by the state to alleviate that unemployment which is due to the inability of normal persons to find work. How to take care of the shiftless, of the incapacitated, or of those who prefer a life of crime is, of course, primarily a problem of individual rather than of industrial maladjustment. There is also another important limitation to be noted in this particular discussion. It would obviously be impossible to include a description and an analysis of all those governmental measures that bear in any way upon the employment of laborers. Practically every important piece of legislation enacted during the early days of the Roosevelt Administration had for at least one of its aims the stimulation of economic recovery, which of course meant more jobs for the workers. To include all these measures in the discussion would not only be impracticable, it would transgress the stated limits of this volume. This discussion will therefore be confined to the more important practices and measures having the alleviation of unemployment as their *primary* purpose. Besides the problem of providing jobs for those who are willing and able to work there is also the problem of taking care of these persons until jobs can be found, and both these aspects of unemployment alleviation will be considered.<sup>1</sup>

#### (a) *Employment Exchanges*

In considering unemployment as one of labor's grievances we found that one of its important causes is maladjustment in the distribution of labor. Sometimes there are jobs to be filled and always there are men out of work, but the two have not been brought together. Arising out of this need for a better distribution of the labor force, private labor exchanges have long been in use. There are some exchanges or bureaus that charge no fees and are very efficiently operated by various philanthropic agencies as well

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<sup>1</sup> The problem of unemployment insurance will be reserved for later treatment in connection with the larger subject of social insurance. See Chapter XX.

as by trade unions. But it is only natural that enterprising business men should have seen here an opportunity to make money and should have devised the profit-making private labor exchange to take advantage of it. Most of the labor exchanges of this type handle chiefly unskilled labor.

Because of the many abuses that have grown up in connection with these private labor exchanges, the government has had to step in and attempt to regulate them. They have been accused of having "three men for one job; one upon the job, one going to the job, and one coming from the job, and securing compensation from all." And there seems to be good evidence that in some instances at least they actually have represented wages to be higher than they were, have sent workers to places where there were no jobs after collecting large fees, have split fees with formen who have cooperated by discharging men in order to make more jobs available, and have engaged in other practices equally contemptible. The trade unions have vigorously opposed them on the ground that on numerous occasions they have sent workers to industries where strikes were in progress without stating what the conditions were. The recent depression increased their opportunities for gain. The American Association for Labor Legislation reports that "in New York City . . . several instances have recently come to light where scores of destitute job seekers were shamefully victimized by these agencies. One jobseller, for example, stole \$1711 in fees from 214 workers, some of whom had pawned household possessions to obtain money to pay for jobs which did not exist."<sup>2</sup>

Most of the states have enacted legislation with a view to preventing these various abuses. Usually a bond is required of anyone who wishes to operate a private employment exchange and a license must be obtained. Some states regulate the location of exchanges, looking with disfavor upon any connection with lodging houses, restaurants, and the like. Also in some jurisdictions an effort is made to regulate the fees by fixing a maximum charge. Other legislatures have regulated the advertising, have required that all applicants be registered, that true information be given concerning the exact conditions at the plant, that the workers be informed if a strike is going on, and so forth. A number of states have attempted to prevent the charging of exorbitant fees by means of license systems under which licenses are granted only to agencies which keep their fees below a designated figure; but in May, 1928, the United States Supreme Court rejected the New Jersey statute establishing such a system on the ground that as a price-fixing law it deprived persons of property without due process.<sup>3</sup> More recently in

<sup>2</sup> *American Labor Legislation Review*, 23:141 (Sept., 1933).

<sup>3</sup> *Ribnik v. McBride*, 48 U. S. 545 (1928).

April, 1941, the Supreme Court unanimously upheld a similar fee-regulating law of Nebraska, thus overruling the earlier decision.<sup>4</sup> The way is now open for states to regulate fees effectively.

The abuses still persist in spite of genuine efforts on the part of a number of states to eliminate them, and so there has arisen a widespread movement to abolish the profit-making exchanges altogether. The movement has not made much headway in accomplishing its object. Washington passed a law prohibiting the collection of fees from workers by an employment agency, but this was later declared to be unconstitutional.<sup>5</sup> It seems to be possible, however, for a state to limit the number of private fee-charging agencies to that for which there is "a public necessity." This is now the law in Wisconsin, New Jersey, and Minnesota and its constitutionality has not as yet been questioned. Although regulation of private employment exchanges is still a needed reform in many places, the intensity of the problem has been lessened in recent years by the reestablishment and growth of the United States Employment Service. During the period of the First World War the federal government operated an employment service on a comparatively large scale. Subsequent to that time there was a good deal of agitation for reestablishment of the federal system on a sound basis. In 1930 Senator Wagner sponsored a bill providing for federal and state cooperation in the maintenance of free public labor exchanges. Congress passed the bill but President Hoover vetoed it after Congress adjourned. The veto aroused a storm of criticism and as a result Secretary Doak was requested by President Hoover to reorganize and enlarge the federal service under the existing law. A half-hearted attempt was made to do this with anything but satisfactory results. In the spring of 1933 Senator Wagner again introduced his bill, and with some amendments it was passed by Congress and was signed by the President on June 6.

Known as the Wagner-Peyser Act, this bill authorized the appropriation of \$1,500,000 for the year ending June 30, 1934, and \$4,000,000 for each of the succeeding four years. One-fourth of the annual appropriation was available for the expenses of the Federal Employment Service, while the remaining three-fourths were allotted to the states in proportion to population. The funds are available on a dollar-for-dollar basis to states which maintain systems of employment offices in harmony with cooperative standards developed under the leadership of the director of the Federal Service.

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<sup>4</sup> *Olsen v. Nebraska*, 313 U. S. 236 (1941).

<sup>5</sup> *Adams v. Tanner*, 244 U.S. 590 (1917).

With the passage of the Social Security Law in 1935 the public employment offices became of increasing importance because the unemployment compensation part of the new law requires the payment of all benefits through public employment offices or such other agencies as the Board may approve. In 1939 under a federal reorganization program, the federal part of the system known as the United States Employment Service was transferred from the United States Department of Labor to the Social Security Board. Now in addition to Wagner-Peyser Act funds the federal government pays for the administration of the services in all the states. Under the present arrangements, therefore, employment offices maintained by the states with the aid and regulation of the federal service, stand ready to serve, without charge, any worker or employer who consults them. At the end of June, 1940, nearly 1500 employment offices were in operation in localities throughout the United States, and itinerant service was provided at more than 3000 additional points.

The coming of the defense program just preceding the Second World War placed additional responsibilities upon the state and federal employment services. The service was charged not only with recruiting men and women for the booming war industries and for the large army construction program, but also was given responsibility for certifying labor shortages or possible labor shortages to the several training agencies. As early as 1940 the federal service instituted a national clearance system of job openings and of available workers, so that the defense and war effort were without doubt furthered by the existence of a more orderly national labor market. Soon after the outbreak of the Second World War upon request of the President the state services were placed under the control of the federal War Manpower Commission in order to have the unity of command necessary for the war effort. It was agreed, however, that this shift was for the duration of the war only and on November 15, 1946, the employment service was returned to state control.

### *(b) Economics of Public Works and Unemployment Relief*

Probably no proposal dealing with unemployment has received so much attention during recent years as that of the use of public works. Probably also no proposal has been the subject of so much confused thinking. Much of this confusion is caused by the fact that there are several different conceptions of what is to be expected of public works and these have not been distinguished and clarified. This is an essential preliminary to any treatment of the subject.

Briefly the main concepts of public works seem to be the following. First there is the long-range planning of public works, which involves no change in the total volume of public expenditures but merely changes their timing. In the second place there is the type of public works program that was sponsored by the Roosevelt Administration primarily as a means of inducing business recovery. In this case the government was definitely setting out to spend enough money on public construction to lift the country out of the depression. This has been called the "market-supporting" program. Finally, public works are sometimes used for "make-work" purposes in the belief that the unemployed might as well be doing some work in exchange for the relief they are receiving. So used they are a form of relief, a form which was used on a large scale during the depression of the thirties.

The idea underlying the planned public works proposal is that the government should to a great extent withdraw from the labor market when trade is brisk and there is a lively demand for labor on the part of private enterprise, and should enter it when the opposite conditions prevail. Besides affording immediate relief to unemployed laborers in the form of work, the reserving of great public enterprises for times of general business inactivity would, it is thought, help to start a revival or at least prevent the depression from becoming very severe. The purchase of the necessary supplies would give a lift to many industries directly or indirectly, and in spending their wages the laborers would stimulate many more. It is assumed that there is a sufficiently large amount of public work that can be done at one time as well as another to make an appreciable impression upon the labor market, but it is the timing element which is regarded as the most important factor. The amount of public construction which it is possible to postpone in order to influence employment is, according to the theory, less important than the precise timing of the acceleration.

There is a difference of opinion among the advocates of the plan as to whether the stimulus should be applied at the start of the pendulum's swing downward or whether it should be applied toward the end of the depression when the corner seems to have been turned and business conditions are definitely on the upgrade. In defense of the first position it is argued that if government expenditures are made early in the depression before the downward movement has become too great they will act as a brake, and although they will probably not stave off the depression, they will reduce its severity and help to maintain a reasonable economic balance. Those who would postpone the expenditures until the depression has largely spent itself argue that under a competitive economic system depressions are inevitable and there is a certain amount of deflation that must be endured before

economic health can be restored. The function that public works can perform is to hasten convalescence.

It will be noted that the expectations of both groups are quite modest. Neither believes that a planned public works program will remove the business depression. The most that either hopes for is to temper its severity while providing employment for some persons at a time when jobs are hard to find.

As a matter of fact long-range planning of public works remains largely in the realm of theory despite the vast expenditures that have been made on public works in this country. As yet it has not had a fair trial. The usual practice is to keep the unpleasant fact of unemployment out of sight as long as possible. Then when an acute condition has developed that cannot longer be concealed the government officials look frantically around for work to be done right away and perhaps succeed in obtaining an altogether inadequate appropriation to finance it. Nevertheless the planned public works proposal received more attention during the recent depression than it has ever been accorded in this country before.

When the government finally admitted that there was a depression, President Hoover urged the governors of the various states to inaugurate all public works possible and the governors in turn relayed the message to the municipalities. Millions of dollars were appropriated by the states and municipalities for the purpose and Congress also appropriated large sums of money. It follows inevitably from this manner of handling the problem that satisfactory results could not be obtained. Indeed our experience with emergency work in the United States was anything but happy. One very serious fault appears when estimates of the volume of public work are examined. Mr. F. G. Dickinson has compiled a table showing estimates of public construction done over a period in which a severe business depression occurred.<sup>6</sup> It is seen that no appreciable increase in the amount of public work took place until 1922, whereas the emergency came in 1920 and 1921.

#### ESTIMATE OF ANNUAL PUBLIC CONSTRUCTION FOR THE UNITED STATES, 1919-1925

<i>Year</i>	<i>Millions</i>	<i>Year</i>	<i>Millions</i>
1919	\$674	1923	\$1,022
1920	852	1924	1,111
1921	859	1925	1,283
1922	1,034		

<sup>6</sup> F. G. Dickinson, "Public Construction and Cyclical Unemployment," *Annals*, 139:177 (Sept., 1928, supplement).



The most important factor—timing—was neglected. A great deal of preliminary work has to be done before actual operations can begin, and it was this preliminary work that was getting under way while the emergency was at its height.

There has also been a tendency to provide emergency work regardless of the need to have that particular work done. Often, too, the work has been done very badly because there was no satisfactory method of selecting the most competent workers. Also the cost has been relatively high because of the hasty planning and the hasty performance which have been common. But there is a strong feeling that these weaknesses are not inherent, that they are due to faults in administration which can be remedied.

One of the first requisites of a satisfactory program of planned public works is an adequate system of unemployment statistics. Reliable data are absolutely necessary to any intelligent plan for the distribution of public work over a period of time. Another essential is that the plans be made far enough ahead to permit of efficient and intelligent performance. The governmental agency, federal, state, county, or city, would have to have on hand engineering plans for all the new construction work that was going to be needed during the ensuing few years, so that the work done would not only be a means of providing employment but would be well done and would be the work that most needed to be done.

It is also absolutely essential that the work be conducted in a strictly business-like fashion and not as a philanthropic enterprise. The workers must be paid the usual wage, must be called upon to work under the usual conditions, and what is perhaps most important of all, must be hired on the basis of efficiency and not just because they are unemployed. Failure to do this has brought the use of public works as an unemployment measure into a not unmerited disrepute. When ragged clothes and a forlorn expression are made the criterion of employment instead of ability to perform the task in hand, the finished product is apt to be about as shabby as the apparel of the men who produced it. Such a policy may sometimes need to be followed as charity, but it is very questionable whether charity should be allowed to intrude itself into the business of public construction. If the idea is simply to require some work in exchange for the relief granted, it might be less costly just to have the men carry bricks from one place to another and back again.

It is also clear that adequate funds must be appropriated for the work. Everyone agrees that there must be adequate funds. What everyone does not realize is that the financing of public works constitutes the most difficult problem connected with the whole proposal. The frantic appropriation of

\$100,000,000 by a highly temperamental Congress amid the equally frantic appeals of the unemployed for some one to buy their apples, soap, or pencils at twice what they are worth can hardly be regarded as sound finance. It is advocated by some that a reserve be set up, the government obtaining the money in the usual way; that is to say, by means of taxation. Instead of expending it during good times it will set the money aside in a reserve fund until bad times comes and then will release it to pay for the public works. The problem concerns the use of the fund during the interim. If the government invests the money in bonds at the time of collection, purchasing power will be put back into circulation when it is least needed. Then when the time to start public construction arrives, the government is required to sell bonds and thus withdraw purchasing power from circulation at the very moment when trade most needs to be stimulated by means of added purchasing power. It is immediately released again, but the question is whether there is any net gain.

On the other hand, the government incurs a rather large expense if it does not invest the fund. It is contended by those who advocate the use of a reserve, and with some force, that the government is not withdrawing funds that would be used for consumption purposes when it sells its bonds. The real trouble during a depression seems to be that the consuming power is not great enough to take the goods produced off the market; and so producers become reluctant to expand their production because of the danger of their not being able to sell their goods, and people who have an uninvested surplus above what they spend for consumption purposes cannot invest it directly. The government can "produce" without any such fear. It does not have to sell the goods it produces. Hence it would seem that the government could use these funds more advantageously during a period of depression than could private producers, although the result would not be so happy if it obtained its funds largely from prospective consumers. But this is not likely to occur. That there is a tremendous reservoir of idle cash during a business depression was clearly demonstrated in June, 1931, when the United States Treasury placed \$800,000,000 in 3½ per cent bonds on the market. Subscriptions totaled more than seven and one-half times the amount sought, the oversubscription being the largest on record. There is the possibility that this method of financing would cause difficulties if the plan called for the government's entering the labor market near the end of the depression, as in that case it might be drawing funds away from private enterprise and might thereby retard recovery to some extent.

It must be acknowledged that as yet the financing of public works remains an unsolved problem. Since the only way to a solution, however, is

the way of experimentation on a scale big enough to warrant the drawing of conclusions, the continued existence of the problem in an unsolved state is justification in itself for the inauguration of a program of planned public works. Obviously such a program could not be launched during the recent business depression, but some provision can be made for future depressions. A little progress has already been made in that direction. In 1931 President Hoover signed the Wagner bill, which provided for preparation of a reserve of public construction and called for the creation of the Federal Employment Stabilization Board, composed of four cabinet members, to adjust and time the huge quantity of federal construction in order to provide employment and purchasing power on a large scale when private industry is slack. Every department requiring any construction work is called upon to prepare and to have always in readiness construction plans covering six years in the future. Whenever in its judgment a depression is imminent the Stabilization Board will recommend to the President that public works be expanded.

During the Roosevelt Administration plans for advanced planning were carried still further with the appointment first of a National Planning Board, later of the National Resources Board, and more recently of the National Resources Committee. These three Boards have done yeoman work in planning public works which will also conserve our natural resources intelligently in future depressions. It remains to be seen whether the studies prepared by these organizations will be used intelligently in the future.

The second type of public works program first came into prominence during the recent depression. It is based upon the idea that if expenditures for public works are sufficiently large, they will make a real contribution toward lifting the country out of the depression.<sup>7</sup> Of course it also has as one of its main purposes the immediate providing of jobs, as do all forms of public works programs. The difference is that this type places its greatest emphasis upon "priming the pump." It is not at all thought that the total amount spent for public works over a period of years will be the same as if no program existed. It will be freely admitted by the staunchest supporter of this market-supporting type of program that something more than *timing* is involved, that it is intended that the expenditures will be big enough to stimulate recovery. The amount will depend upon the severity of the depression.

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<sup>7</sup> For a critical analysis of this type of program, see Sumner H. Slichter, "The Economics of Public Works," *American Economic Review*, 24:174-185 (Mar., 1934, supplement).

How is it expected that such expenditures will "prime the pump"? The program is based upon the assumption that the depression is mainly the result of a lack of balance between consumption and production. Increased economic activity can be brought about only by increased consumption and this can take place only as a result of increased purchasing power. During a depression there is always a decline in private spending. It has been estimated, for example, that the volume of spending in 1932 was about half that in 1929. If recovery is to take place there must be an appreciable increase in spending. Government spending on public works will not only increase the amount of spending directly but will also increase it indirectly. The wages that are received by the newly employed workers will for the most part be spent. Materials must be bought from private industries, and these industries, stimulated by the government orders, will in turn pay more wages, and these will be spent and thus will stimulate other industries and so on down the line. Through this multiplier effect there results an increase in total incomes much greater than the amount of the original expenditure.<sup>8</sup>

The argument offered by the advocates of large public works expenditures calls for some analysis before being accepted without qualification. Is there not a real possibility that a large public works program may actually decrease the total amount of spending and thus aggravate the depression? In an economic system such as exists in the United States the major part of the spending is controlled by private enterprises. It would take but a small increase in the postponement of buying on the part of private enterprises to offset a large increase in buying by the government. The question that then suggests itself is whether or not there are any ways in which large government expenditures might cause business enterprises to reduce their expenditures. There is first the possibility that private enterprisers might consider the existing situation to be too highly artificial. Suppose that recovery has actually started to some extent. In general, enterprisers have been postponing improvements, replacements, and expansions until they were fairly certain that the worst was over. At some signs of revival they begin to enlarge their operations. But suppose the government has stepped in and has made huge expenditures on public works. May not the private business operator fear that the increased economic activity which he sees is merely the result of government spending and that when this spending stops, as in time it must, business will again be plunged back into the depths of depression? In such a case government spending has reduced private spend-

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<sup>8</sup> J. M. Keynes, *The General Theory of Employment, Interest, and Money*. (Harcourt Brace, 1936).

ing because it has shaken the businessman's faith in the revival that has actually taken place.

It is contended by some, and with a good deal of force, that another way in which huge government expenditures for public works may actually retard recovery or add to the severity of the business depression is through the effect upon certain parts of the price structure. This danger is particularly great if the government begins its program in the early part of the depression. In the main it can be said that before recovery can take place there must be a downward revision of cost, particularly the cost of capital equipment and of labor. Now it is just these costs that may be prevented from falling by government activity in construction, for political factors would prevent the government's paying a wage much below "the normal rate." The same thing is true to a less extent of the materials that the government buys. Thus to some extent the government is preventing the necessary adjustments in the price structure by "pegging" certain important prices.

Something should be said concerning the difficulties of administering a program of spending on a scale big enough to "prime the pump." Experience has clearly shown the possibilities of inefficiency, mismanagement, and even graft involved in such a gigantic program. Public Works Administrator Ickes was so anxious that the money in his charge should be spent not only wisely but honestly that there was considerable delay in the actual expenditure of the appropriated billions. The unspent balance certainly did not make any contribution toward stimulating business revival. Must an administrator then choose between inefficient and perhaps dishonest expenditure and an extreme caution that practically amounts to inaction? Many students of the question are convinced that such a choice is inevitable and therefore that the difficulty of administration alone constitutes an insuperable barrier to the use of a vast program of public works for the lifting of a serious business depression. Whether the pump-priming activities of the New Deal stimulated or retarded recovery will long be a subject for debate among economists and among advocates and enemies of the Roosevelt Administration.

The third type of public works program is that which has as its main purpose the providing of jobs for those who might otherwise be on relief.<sup>9</sup> An essential theoretical difference between this type and the other two already discussed is that in the first two cases one of the requisites to success is that the workers be chosen on the basis of their ability to do the work and

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<sup>9</sup> This type of program is not usually limited to construction but includes a number of different kinds of work.

not merely because they are out of jobs. Under this type of program the workers are employed on public works frankly because they are out of jobs. It is simply a method of granting unemployment relief. The choice is between this kind of relief and the "dole." The hope is, of course, that the expenditures for this type of public works program will make a contribution toward business recovery that outright relief will not make. But the hope is probably vain. As J. M. Keynes has pointed out, if there is to be such a contribution there must be an addition to national income. When the government takes money from one person in the form of taxes and gives it to another in the form of relief, there is not necessarily an increase in spending; and it is extremely doubtful whether public works carried on by men who are selected because they are unemployed and not because they are efficient will increase spending either.

The only question that is really at issue in connection with this kind of public work is whether it is better to make the recipient do something for his relief than to give it to him outright. Harry L. Hopkins, former Federal Emergency Relief Administrator, stated the case for work relief as follows, "There are those who tell us that we should not have work relief. They tell us that straight relief is cheaper. No one will deny this contention. It costs money to put a man to work. Apparently, to the advocates of direct relief the primary object of relief is to save the government money. The ultimate human cost to the government never occurs to them—of a continued situation through which its citizens lose their sense of independence and strength and their sense of individual destiny. Work preserves a man's morale. It saves his skill. It gives him a chance to do something useful."<sup>10</sup>

Few would question the validity of Mr. Hopkins' contentions if work relief lived up in actual practice to the standards set for it on paper.<sup>11</sup> The fundamentals upon which administrators attempt to base it may be stated somewhat as follows: (1) the work must be worthwhile and "non-competitive" and must not interfere with other public or private employment; (2) employment of the unemployed on this kind of project will save the community much "ultimate expense"; (3) wage rates must be set which will have no effect upon the rates paid for normal commercial or public work; (4) the work should leave the worker prepared to resume his regular work. Taken as a whole these principles raise the question as to whether it is possible in a competitive society to put the unemployed to work on projects

<sup>10</sup> *New York Times*, January 6, 1935.

<sup>11</sup> Cf. Richard A. Lester, "Emergency Employment in Theory and Practice," *Journal of Political Economy*, 42:466-491 (Aug., 1934).

that will add to the national income without interfering seriously with the functioning of private competitive enterprise. That is what was attempted.

If the first above-mentioned principle is to be adhered to, it is clear that work relief employment must be "of a public nature and of no special benefit to private individuals on relief," since if it is of such benefit, obviously they will cease to purchase the good or service affected from the private producer and will thereby decrease employment in the private industry.<sup>12</sup> It is theoretically possible to supply such work. The theory of long-range planning of public works could be applied or *additional* work could be created. If the former were done, there would definitely be a loss of efficiency in our public works because the workers would not be selected on the basis of efficiency but on the basis of need. The alternative course, creation of additional work, would meet a serious practical difficulty. With public revenues on the downgrade harassed officials found it difficult enough to obtain the funds to carry on the usual work.

In actual practice experience has demonstrated that in the main the men placed on work relief have either displaced other workmen or have been assigned to useless tasks. Examination reveals that the expenditures of a sample group of New York cities were sharply curtailed in 1932 for those types of public work on which work-relief labor was used (highways, parks, and playgrounds), and that the curtailment was in direct proportion to the amount of work relief performed by the cities.<sup>13</sup> Such has been the story in previous depressions. After a thorough study of the work-relief projects of the 1914-1915 depression, the Mayor's Committee on Unemployment in New York City concluded that "with rare exceptions relief employment must directly or indirectly displace workers employed under normal conditions."<sup>14</sup> If other workers are displaced there is no net gain in employment; and if work is done that would not be done in normal times it is apt to be valueless or nearly so, as raking leaves, cutting weeds on vacant lots, or wielding pick and shovel at 20° below zero, and this may be more damaging to a man's morale than outright relief. To ask on the one hand that the work be worthwhile and on the other that it be non-competitive and

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<sup>12</sup> It is interesting to note that as long ago as 1821 T. R. Malthus wrote, "It is also of importance to know that, in our endeavors to assist the working classes in a period like the present, it is desirable to employ them [the poor] in unproductive labour, or at least in labour, the results of which do not come for sale into the market." *Principles of Political Economy*, p. 395 (1821).

<sup>13</sup> Richard A. Lester, "Emergency Employment in Theory and Practice," *Journal of Political Economy*, 42:470-471 (Aug., 1934).

<sup>14</sup> Mayor's Committee on Unemployment in New York City, *How to Meet Hard Times*, p. 101 (Jan., 1917).

that it not displace other workers seems in practice to be a contradiction in terms.

What about the second principle, that "ultimate expense" be saved the community? Viewed from this standpoint work relief appears even less satisfactory than before. From every available source of information comes the decisive conclusion that work performed by the unemployed is much more expensive than work performed by regular public employees or under the contract method. A typical statement is that made by the former director of the Emergency Relief Administration in New Jersey: "The proportion of dollar efficiency of public made work is reported in New Jersey to vary from 15 per cent to 50 per cent. If \$120,000 is to be spent, it will produce three times as much results for the taxpayer done by the contract-machine method."<sup>15</sup> Everywhere hand work has been used in place of machines, workers have been rotated, there has been no discharging for inefficiency, and a great deal of outdoor work has been done in winter when weather conditions were extremely unfavorable. Skilled laborers have been assigned to unskilled work and in general little account has been taken of special qualifications. And of course the work has in no sense been planned. Under such conditions inefficiency with resulting increased cost is inevitable.

Consider now the third principle that the wage rates set for the "non-competitive" work done by relief workers should have no effect upon other wage rates. Can this be accomplished? Wage rates in private industry are in general determined by the forces of competition. The work done by the unemployed is supposed to be "non-competitive" and therefore the wage rates must be fixed arbitrarily. If these rates are made lower than the competitive rates the latter are bound to be affected, particularly the wage rates of public employees not on relief. And these rates are in general competitive rates. In many cases the relief employees have worked side by side with the regular employees. The tendency is for the relief workers gradually to replace the regulars, as was pointed out above, or to force down their wage scales through the great emphasis upon economy. On the other hand, if the relief workers are paid the same rates as the regular employees, the grade of labor performed by the relief workers will tend to become the norm for all the workers. This means increased wage cost per unit of work done, and the result will be the same, of course, if the relief wage rates are *higher* than the regular wage rates. Cases are not unknown during depressions of men who have left regular positions in order to join the relief forces because of the higher wage rates and the smaller amount of work required. The recent

<sup>15</sup> Emergency Relief Administration, *Unemployment and Relief in New Jersey*, Interim Report, p. 33 (Jan., 1932).



depression was no exception in this respect. The tendency was especially noticeable under the Civil Works Administration. Again relief administrators seem to have been attempting to do the impossible—to set up “non-competitive” wage rates in an economic society in which most wage rates are the result of the play of competitive forces.

To ask the question as to whether the worker on relief has been provided with work of a sort that will keep him prepared to resume his regular work is to answer it. In actual practice little attempt has been made to do this. And what was the use? How could it have been done? The work had to be “non-competitive,” and it is certainly not possible to provide “non-competitive” work in sufficient quantity and sufficient variety to fit the divergent qualifications of any number of the workers.

In conclusion it can be definitely stated that experience in the recent depression and in previous depressions has left the problem of providing work for the unemployed that will result in a net increase in the national income without interfering with the functioning of the competitive economic machine in an unsolved state. Those who argue for outright relief rather than work relief have in the circumstances an extremely strong case.

### *(c) Public Works and Unemployment Relief*

The foregoing brief analysis of the use of public works to alleviate unemployment and comparison of public works as a form of unemployment relief with outright relief grants should be supplemented by a condensed account of the experience of the United States during the recent depression. Such a study will offer a case history of one experiment with public workers. Never before in the history of the world has a government been called upon to face such an unemployment problem and never before have such huge expenditures been made for public works and unemployment relief. Only the most important phases of the various programs can be included as it would be impossible in so brief a space even to mention all the details of these gigantic efforts.

In the early days of the depression no systematic effort was made to develop public works or to provide unemployment relief. The general position of the government at Washington was that the unemployed should be cared for by the local communities, preferably by private organizations. President Hoover did send out appeals to various private and public organizations to expand their work wherever possible, and the states and municipalities responded to some extent by making additional appropriations for public works. Congress itself made what seemed at that time to be sub-

stantial appropriations for public works. As the months went by, however, the states and municipalities found their resources becoming more and more inadequate to meet the mounting needs of the unemployed and they appealed to the federal government for aid. At first the government was cold to these appeals, insisting that unemployment was a local problem and should be dealt with as such. Finally, however, provision was made for the granting of limited loans to the states by the Reconstruction Finance Corporation. In the meantime, private sources of relief funds were being dried up and the unemployed were being thrown more and more upon public agencies.

In the early years of the depression private contributions for relief purposes amounted to from 30 to 40 per cent of the total while in the latter part of 1934 they constituted less than 5 per cent of the total. The shift to the national government is clearly shown by the fact that in the early part of the depression it provided practically none of the funds, while of the \$1,340,000,000 spent strictly on relief from the beginning of 1933 to the end of June, 1934 (this does not include public works projects of the first two kinds discussed above), 62.8 per cent was furnished by the federal government, 16 per cent by state governments, and 21 per cent by local governments.<sup>16</sup>

The development of a systematic and comprehensive program began with the advent of the Roosevelt Administration. The main part of the program was undoubtedly the Public Works Administration. This was provided for under Title 2 of the National Industrial Recovery Act, approved by the President on June 16, 1933. The act authorized the appropriation of \$3,300,000,000 to finance the Public Works Administration. The main function of the P.W.A. was to finance projects that it considered to be socially desirable and sound from an engineering standpoint. It was definitely not a "make-work" project. The P.W.A. was also a lending agency in so far as it financed non-federal projects. All P.W.A. loan and grant contracts included detailed specifications concerning wage rates, hours, and other working conditions. The authorized \$3,300,000,000 has been allocated to various agencies and projects.<sup>17</sup> The President allotted \$238,000,000 of this sum to the navy, \$324,000,000 to the C.C.C., \$400,000,000 to the C.W.A., and various other sums to other agencies. The result was that approximately \$1,666,000,000 was left to the P.W.A. to

<sup>16</sup> E. Wight Bakke, "Fifth Winter of Unemployment Relief," *Yale Review*, 24:263-264 (Winter, 1935).

<sup>17</sup> It is important to note that the N. I. R. A. itself allocated \$625,000,000 of this sum to such agencies as the Division of Subsistence Homesteads, the Tennessee Valley Authority, and the Farm Credit Administration. These agencies did not come under the direct jurisdiction of the P. W. A.

finance projects investigated and approved by it. Of this amount about \$760,000,000 was allotted to federal departments and agencies to finance construction projects and about \$960,000,000 to non-federal projects. The Emergency Housing Corporation received \$114,250,000 to finance low-cost housing and slum clearance.

The Emergency Appropriation Act of 1934 made available to the President for the P.W.A. the additional sum of \$500,000,000. In addition to this the President empowered the R.F.C. to purchase municipal bonds held by the P.W.A., the proceeds to be available to the latter for the financing of further loans to public bodies.

According to the U. S. Bureau of Labor Statistics, during the twelve months August, 1933, to July, 1934, inclusive, contracts for construction projects totaling nearly \$1,500,000,000 were awarded. Pay rolls for work at the site of the construction projects totaled nearly \$200,000,000. Orders had been placed for materials to cost over \$400,000,000, creating more than 1,100,000 man-months of labor in the factories manufacturing this material.<sup>18</sup>

The other principal division of the Roosevelt program was the Civil Works Administration which later became the Works Progress Administration or the W.P.A. When it became evident that the P.W.A. would absorb a very small proportion of the unemployed during the winter of 1933-1934, this new program was developed to provide emergency employment for several million unemployed. The work undertaken included a variety of activities, many even for the "white-collar" classes.

By the end of 1940, \$8,927,425,000 had been expended by the W.P.A. and other federal agencies; 89 per cent of this amount, or \$7,962,925,000, was spent for workers' wages and administrative employees' salaries. In the fiscal year 1939-1940 it cost the federal government approximately \$61.50 to employ a W.P.A. worker for one month, \$54.25 being spent for his wages, \$5.00 for materials, and \$2.25 for administration.<sup>19</sup>

The average number of workers employed in the projects operated by the W.P.A. was 220,163 at the beginning of the project in August, 1935, and increased to 3,019,098 in February of the following year. The number decreased gradually to 1,445,977 in September, 1937, but rose again to 3,334,694 in October, 1938, the latter figure including 92,637 workers employed under projects operated by other federal agencies and financed by allocation of W.P.A. funds. Another low point was reached in Septem-

<sup>18</sup> *Monthly Labor Review*, 39 856-860 (Oct., 1934).

<sup>19</sup> "Handbook of Labor Statistics," United States Bureau of Labor Statistics, *Bulletin No. 694*, vol. 1, p. 903 (1941).

ber, 1939, when the total number employed by all these federal agencies was 1,720,996. A temporary rise in the number employed again occurred, and approximately  $2\frac{1}{3}$  millions were employed in February, 1940. By July of the same year only 1,655,477 were employed; at the end of the year the total was 1,859,549.<sup>20</sup>

During the period from August, 1935, to December, 1940, 100,000 public buildings and 565,000 miles of roads had been built or improved; 69,100 bridges and viaducts had been constructed and 42,000 rebuilt or improved; 1493 parks, 2704 playgrounds, 2746 athletic fields, 9000 tennis courts; and 700 swimming pools had been built.<sup>21</sup>

In addition to this physical accomplishments, the W.P.A. carried on an educational program which included literacy, naturalization, vocational training, other adult education classes, nursery schools, and art and music instruction classes. In October, 1940, more than 1,000,000 persons were enrolled in the adult education classes, and over 1300 children in the nursery schools.<sup>22</sup>

Although unemployment continued to some extent even in the period of the Second World War, the problem ceased to be a significant one, once the defense program was well under way. Within a very short time after the United States went into the war, we became concerned over finding enough men and women to meet the requirements of the armed forces, take over the millions of newly created war jobs, and fill the essential peacetime industries. As the manpower shortage became more critical it was necessary for the government to pass restrictions preventing employees from wandering from job to job, and employers from bidding wages higher and higher in attempts to hold efficient labor forces. The War Manpower Commission and the Wage Stabilization Division of the National War Labor Board, respectively, were charged with the responsibility of enforcing these regulations.

Even in the midst of this period of acute labor shortages and extremely high incomes, however, there was much talk of postwar planning, especially with regard to unemployment. Long before the war was won various studies had been made and carefully written recommendations offered. Among the most significant of these were the plans submitted in the Pabst postwar employment contest<sup>23</sup> and the research studies published by the

<sup>20</sup> *Ibid.*, p. 901.

<sup>21</sup> *Ibid.*, pp. 903 and 904.

<sup>22</sup> *Ibid.*, p. 904.

<sup>23</sup> The seventeen winning plans were published by the Pabst Brewing Company and copies were given to government and other agencies concerned with planning for postwar employment.

Committee for Economic Development.<sup>24</sup> These studies and many others discussed the problem both as one for the immediate postwar period, as well as one which required long-range planning.

We have long realized, of course, that the unemployment problem is always either with us, or is waiting for us at the next corner. There has been no escape and we can hope for none in the future if we do not plan intelligently and far enough in advance. We have, it is true, made some progress. Recent developments such as the enactment of Unemployment Insurance laws, and the public works program of the 1930's indicate that the government, as well as the employer and employee, is beginning to assume responsibility for the alleviation of unemployment. A great deal more must be done, however, before the solution to the problem will be even approached.

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<sup>24</sup> Harold M. Groves, *Production, Jobs and Taxes*, A. D. Kaplan, *The Liquidation of War Production*, John Maurice Clark, *Demobilization of Wartime Economic Controls* and Richard A. Lester, *Providing for Unemployed Workers in the Transition*, McGraw-Hill, 1944 and 1945. Other studies are to follow these.

## CHAPTER XIX

### MEETING THE WAGE-EARNER'S GRIEVANCES

(Continued)

#### HOOR LEGISLATION <sup>1</sup>

IN THE United States the first legislation regulating the hours of labor applied to children. Massachusetts enacted a ten-hour law in 1842 for children under twelve years of age in manufacturing establishments, but no serious attempt was made to enforce this law or laws similar to it which were enacted in other states. Most of the progress in legislation controlling the hours of children has been made during the last two decades. Most of the states now have laws on their statute books establishing the eight-hour day for children under sixteen, and usually prohibiting all night work. The constitutionality of such laws has never been seriously questioned because minors are for many purposes wards of the state and the state has a right to do whatever it deems best for their welfare. Furthermore, a minor's right to contract cannot be abridged inasmuch as he cannot enter into a free contract. The federal government has made two attempts to regulate child labor but in each case the law was held to be unconstitutional. It has also dealt with child labor through the various codes under the N.I.R.A. and more recently under the Fair Labor Standards Act. The efforts of the federal government to deal with child labor will be considered in another connection.<sup>2</sup>

In many instances hour legislation for children has been accompanied by regulation of the hours of women. The early laws of this type enacted before the Civil War were largely ineffective because they limited the hours only in the absence of an "express contract requiring greater time." Ohio enacted a ten-hour law for women in 1852, but this was unenforceable because it only prohibited a longer day than ten hours when women were *compelled* to work more. Massachusetts enacted a ten-hour law for women in 1875, but only "wilful" violations were penalized. In 1879, when the "wilful" was deleted, this law became the most effective of all the hour laws for women.

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<sup>1</sup> For a comprehensive treatment of the shorter-hours movement, see Marion C. Cahill, *Shorter Hours* (Columbia University Press, 1932).

<sup>2</sup> See pp. 515 ff.

Since that time the movement has gone steadily forward. There are only a very few states at the present time that are without effective legislation regulating the hours for women. In general the American laws are quite simple, fixing a maximum daily and weekly limit for all the occupations included in the statute, which usually covers most of the chief industries of the state. The test is whether or not the industry is dangerous to the woman's health, agricultural and domestic service being usually excluded because they are not considered to be particularly dangerous and because of the difficulties of enforcement. The hours in a number of states have been reduced to nine daily and in several to eight. Most states do not set a legal closing hour, although some prohibit night work altogether.

During recent years a notable advance has been made in the administration of these laws. In a flat-rate law no attention is paid to the different conditions existing in different industries, whereas a nine-hour day in one industry may obviously be more detrimental to the health than the same length day in another. Hence a number of states have adopted the general principle that women shall not work for a period of time that endangers their health, and have placed in the hands of a commission the power to determine how long the day shall be for each industry.

It was to be expected that the constitutionality of these laws would be called in question. One reason why Massachusetts made so much progress in regulating hours of work for women was that the courts early accepted this restrictive policy of the legislature "as a matter of course." Other state courts, however, did not at first adopt such a liberal policy. In 1895, for example, the Illinois Supreme Court declared an eighth-hour law to be unconstitutional because it could see no "fair, just and reasonable connection between such limitation and public health, safety, or welfare proposed to be secured by it."<sup>3</sup> A few years later this court reversed itself, declaring in a decision which sustained a ten-hour day for women that differences of sex "often formed the basis of a classification on which to found legislation."<sup>4</sup> In 1902 a Nebraska court upheld the constitutionality of a ten-hour statute for women on the ground that since women are "unable, by reason of their physical limitations, to endure the same hours of exhaustive labor as may be endured by adult males," it follows that "the State must be accorded the right to guard and protect women as a class."<sup>5</sup> Court decisions of other states also upheld laws regulating hours for women. Finally, in 1908 the United States Supreme Court settled the matter of the ten-hour law for

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<sup>3</sup> *Ritchie v. People*, 155 Ill. 98 (1895).

<sup>4</sup> *Ritchie and Co. v. Wayman*, 244 Ill. 599 (1910).

<sup>5</sup> *Wenham v. State*, 65 Neb. 394 (1902).

women by its decision in the case of *Muller v. Oregon*. The court declared: "Differentiated by these matters from the other sex, she [woman] is properly placed in a class by herself, and legislation designed for her protection may be sustained, even when like legislation is not necessary for men, and could not be sustained."<sup>6</sup>

It still remained a matter of doubt as to whether an eight-hour law would be sustained. In 1911 California enacted a law that was particularly noteworthy in that it was not only the first to establish a maximum eight-hour day and forty-eight-hour week for women but also covered an unusually wide range of occupations. The constitutionality of the law was questioned immediately and in 1915 the United States Supreme Court in two decisions upheld it on the ground that the same principles were at stake as in the case of laws previously allowed.<sup>7</sup> Thus at the present time the state is free to restrict the hours for women to as few as eight per day through the exercise of its police power.

At present there are only four states<sup>8</sup> which do not have laws regulating the hours of work for women. The District of Columbia, Puerto Rico, and nineteen states limit the number of hours per day to eight, whereas other states have nine- and ten-hour laws. Several states vary the number of hours with the type of industry, and some states allow women to work overtime during the seasonal rushes in canneries and before Christmas in retail stores. Sixteen states prohibit night work for women in certain industries.<sup>9</sup>

Much legislation has been enacted in the United States for the purpose of regulating the hours of women and children, but until recently relatively little has been done to regulate hours for men. One reason is that it has been more difficult in the case of men to show a relationship between the length of the working day and the worker's health. Another reason is the widespread feeling that with their better bargaining ability men can obtain shorter hours for themselves by means of collective bargaining. Indeed, until quite recently organized labor has generally opposed hour legislation for men, and it is true that much progress has been made through collective bargaining in shortening the workday. But this progress, let us remember, has been largely limited to the highly skilled and highly organized groups.

President Van Buren made the first attempt to regulate hours for men

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<sup>6</sup> *Muller v. Oregon*, 208 U. S. 412 (1908).

<sup>7</sup> *Miller v. Wilson*, 236 U. S. 373 (1915); *Bosley v. McLaughlin*, 236 U. S. 385 (1915).

<sup>8</sup> Alabama, Florida, Iowa, and West Virginia.

<sup>9</sup> "Handbook of Labor Statistics," Bureau of Labor Statistics, *Bulletin No. 694*, vol. II, pp. 384-385 (1941).



by law when, in the year 1840, he issued an order to the effect that the ten-hour day was to be established in the government navy yards. As a result of five federal acts passed in 1868, 1892, 1912, 1931, and 1936, respectively, the eight-hour day was established in all government industries and in those industries producing goods for government use. Some exceptions were allowed and provision was also made for "emergencies caused by fire, famine, or flood, by danger to life or property, or by any other extraordinary event or condition."

Most of the early laws, particularly those enacted by the states, were to a very large extent unenforceable. Not until Kansas enacted her law in 1891 was an enforceable law of this type to be found on the statute books of any state. This law fixed the hours for men working directly for the state and also for men employed by municipal corporations or contractors for public works.

In the railroad industry, at the very point where the element of public safety enters so prominently and makes the matter so extremely important, the regulation of hours is found to be uncommonly difficult. A train must be operated between two points, and an engineer cannot very well quit work at the end of his eight hours, leaving the train wherever it happens to be. In the early days the railroad companies were prone to exploit this difficulty, requiring their train operatives to make shockingly long runs. Accidents were bound to occur and they did occur, bringing an insistent demand for regulation of the hours of trainmen in the interest of the general public as well as the workers themselves.

Many states, in fact more than half the states in the Union, have laws regulating the hours of train operatives and also of those workers who are involved in the movement of trains, such as telegraphers, dispatchers, etc. In 1907 the federal government enacted a law applying to interstate lines which limited the hours of trainmen to sixteen a day, with certain provisions for rest periods. Employees connected with the movement of trains were limited to nine hours in places continuously operated day and night and to thirteen hours in places operated only during the day time. In 1916, as the result of a threatened railroad strike, Congress enacted the Adamson law establishing a "basic" eight-hour day. The working day was not limited to eight hours by this act. The eight-hour day was used mainly for purposes of wage determination. There has been some question, despite Supreme Court pronouncements, as to whether this was really an hour law or a wage law, and as a matter of fact both wage increases and hour reductions followed upon its enactment. Some states, although not many, have passed laws regulating the hours of traction employees.

The great increase in bus and track transportation led to the enactment in 1935 of a federal law giving the Interstate Commerce Commission power to regulate the hours of work for operators of motor vehicles used in interstate commerce.

Some industries are more than ordinarily dangerous to the men who work in them. The mining industry having long been regarded as one of these, it is natural that legislation regulating hours in hazardous occupations should have begun with mining and the industries closely related to it. At the present time something over a dozen states have enacted laws limiting the working hours of all the men employed in the mines to eight, but most of the chief coal-mining states are still without eight-hour laws.

The state and territorial laws regulating the hours of work for men may be summarized as follows: Alaska, Hawaii, Puerto Rico, the District of Columbia, and twenty-nine states now have laws regulating the hours of labor on public works. These laws limit the hours to eight per day, and apply to laborers, workmen, and mechanics. About two-thirds of the states have passed laws regulating the hours for transportation employees, and most states limit the hours of work of bus and truck drivers to ten or twelve. More than a dozen states regulate the number of hours of work in the more hazardous industries, chiefly in mining, smelting, or related industries. Most of the laws are eight-hour laws, but some limit the workday to ten hours. Recently several states have passed hour laws for men employed in private industries in which neither public safety nor the employees' health was in question.<sup>10</sup>

The constitutionality of hour laws for men has been more open to question than that of the laws applying only to women. The obstacle lies in the clauses of the constitution which provide that neither the federal government nor the state shall deprive a person of life, liberty, or property without due process. An hour law deprives a person of the liberty to enter into a free contract calling for hours in excess of the amount stipulated by the law. Laws protecting women have been held to be constitutional because they were regarded as a legitimate exercise of the police power, but in the case of men it has been harder to establish the connection between the length of the working day and the public health and safety. The courts have consistently upheld laws regulating the hours of men engaged in public works and in transportation, where the public safety has been at stake, but there has been much difference of opinion regarding laws whose sole purpose is to promote the welfare of the employees.

<sup>10</sup> "Handbook of Labor Statistics," Bureau of Labor Statistics, *Bulletin No. 694*, vol. II, pp. 382-83 (1941).

Perhaps the most significant decision that has been rendered in this connection was the *Holden v. Hardy* decision in 1898, which seems to have pretty well established the constitutionality of laws regulating the hours of workers in the mines. The Court declared: "These employments [underground mines, smelting, reduction, or refining of ores or metals] when too long pursued the legislature has judged to be detrimental to the health of the employees, and, so long as there are reasonable grounds for believing that this is so, its decision upon this subject cannot be reviewed by the Federal courts."<sup>11</sup>

In 1905 the United States Supreme Court held unconstitutional a ten-hour law for bakers enacted by New York State. In this case the Court held that "to the common understanding the trade of a baker has never been regarded as an unhealthy one" and it followed therefore that "the act is not, within any fair meaning of the term, a health law, but is an illegal interference with the rights of individuals . . . to make contracts regarding labor upon such terms as they may think best."<sup>12</sup> It is apparent from the decision that the Court did not think the evidence sufficient to prove that the trade endangered the bakers' health to an extent that would warrant abridging their right to enter into contractual relations.

Twelve years later, however (1917), the Supreme Court passed favorably upon the Oregon ten-hour law for all workers in manufacturing establishments, saying in part: "There is a contention made that the law, even regarded as regulating hours of service, is not either necessary or useful 'for preservation of health of employees in mills, factories and manufacturing establishments.' The record contains no facts to support the contention, and against it is the judgment of the legislature and the [state] Supreme Court."<sup>13</sup>

Until the Supreme Court of the United States has passed upon the constitutionality of an eight-hour law for men, the status of such laws will remain uncertain. In 1917 the legislature of Alaska enacted an eight-hour law that was comprehensive. This law was declared unconstitutional by a federal court in 1918, the judge contending that it was not a health law and constituted "meddlesome interference" with individual rights. Had the solicitor general permitted this case to be appealed to a higher court, the position of the general eight-hour law might by now have been definitely established by the highest court in the land.

One of the most important provisions of the N. I. R. A. from the stand-

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<sup>11</sup> *Holden v. Hardy*, 169 U. S. 366 (1898).

<sup>12</sup> *Lockner v. New York*, 198 U. S. 45 (1905).

<sup>13</sup> *Bunting v. Oregon*, 243 U. S. 246 (1917).

point of labor was that affecting hours of work. Employers and employees were given the right to come to an agreement concerning the maximum hours provision to be included in their code. Actually most of the codes specified a maximum week of forty hours when first approved, and many of them later called for a still shorter working week.<sup>14</sup>

Apparently if the Supreme Court had not acted unfavorably on the N. I. R. A., the codes would have had a definite effect in reducing the hours of labor. As it was, with the exception of the Walsh-Healey Act of 1936 applying an eight-hour day and forty-hour week to all government contracts, federal control of the hours of labor in industry was not again attempted until 1938, when the Federal Fair Labor Standards Act was passed. The hour section of this law set the maximum work period for all industries in interstate commerce at forty-two until October, 1940, when the maximum was reduced to forty. Congress based its authority to pass this law upon its control over interstate commerce and this power has been upheld by the Supreme Court.<sup>15</sup> The law does not prohibit work in excess of forty hours but provides that time and a half must be paid for hours in excess of forty worked in one week.

### THE MINIMUM WAGE

No attempt has been made in the United States to fix the exact wage rate by law. Not only would any such legislation probably be unconstitutional but it would not have the support of the laborers themselves. Legislation concerning the amount of wages has taken the form of an attempt to fix a rate below which no wage shall be permitted to fall, in other words of minimum-wage laws. There is a great deal of legislation regarding conditions of wage payment, such as time of payment, place of payment, and basis of payment; but only recently has the fundamental matter of the amount of the wage begun to be seriously considered by the states.

In this field, as in the whole domain of state regulation of social conditions, the United States has moved more slowly than some of the other countries of the world. The first law dealing chiefly with the minimum wage was enacted by the state of Victoria, Australia, in 1896. At first the law covered male and female employees in a few low-wage industries, but it was later extended to cover practically all of the main manufacturing industries. In 1894 New Zealand enacted a law providing for compulsory

<sup>14</sup> For a brief summary of the provisions of the various codes, see *Monthly Labor Review* 43:886 (1935).

<sup>15</sup> *U. S. v. Darby Lumber Co. et al.*, 312 U. S. 451 (1941) *Opp Cotton Mills, Inc., et. al., v. Administrator*, 312 U. S. 524 (1941).

arbitration of labor disputes under which the conciliation boards could fix minimum wages if necessary to preserve industrial peace. In a sense this was a minimum-wage law. Other provinces of Australia have also enacted minimum-wage laws, mostly in connection with compulsory arbitration legislation, but it is the Victoria law which has served as the model for Great Britain and the United States.

In 1909, largely as the result of a campaign against sweating, Great Britain enacted the Trade Boards Act. This law followed in general the Victoria law and provided for boards to fix minimum wages in industries where rates were unduly low. The scope of minimum-wage legislation in Great Britain has been gradually widened until now it covers practically all the important industries that employ women and children. During the past two decades numerous laws have been passed in North and South America and in Europe.<sup>16</sup>

There has been a good deal of agitation in this country for minimum-wage legislation, and in some states this has borne fruit. Massachusetts led off with legislation enacted in 1912. This law created a minimum-wage commission and authorized it to establish "standard" minimum-wage rates for minors of both sexes and for adult women workers. The rates fixed by the commission, or by subordinate wage boards, were to be enforced only by moral pressure. The first compulsory minimum-wage laws were enacted in 1913 when seven states put this kind of legislation on their statute books. In the same year Nebraska enacted the Massachusetts type of law. Neither Nebraska nor Colorado, however, has ever put its legislation into operation. By 1923 fifteen states, together with the District of Columbia and Puerto Rico, had enacted minimum-wage laws.<sup>17</sup>

The year 1923 is one to be remembered in connection with wage legislation because of the United States Supreme Court decisions of that year. The constitutionality of minimum-wage laws had already been questioned. Two cases under the Oregon law came before the highest court of that state in 1914 and the law was upheld as a valid exercise of the police power.<sup>18</sup> An appeal was taken to the United States Supreme Court, and in 1917, by a four to four vote (Mr. Justice Brandeis not participating because of a previous connection with the case), the decision of the state court was left in force. The supreme courts of four other states subse-

<sup>16</sup> Cf. Barbara N. Armstrong, *Insuring the Essentials* (Macmillan, 1932), pp. 1-57, 80-89, and 106-148; and Harry A. Mills and Royal E. Montgomery, *Labor's Progress and Some Basic Labor Problems* (McGraw-Hill, 1938), pp. 278-301.

<sup>17</sup> The Texas law was repealed in 1921, so there were really but twelve states with minimum-wage laws in operation in 1923.

<sup>18</sup> *Stettler v. O'Hara*, 69 Oregon 519 (1914); *Simpson v. O'Hara*, 70 Oregon 261 (1914).

quently upheld the laws in those states.<sup>19</sup> These various decisions seemed to have pretty definitely established the constitutionality of minimum-wage legislation.

The upset came with the questioning of the law for the District of Columbia. The law was upheld by the Supreme Court of the District of Columbia and this decision was sustained by the Court of Appeals but on a rehearing it was declared unconstitutional.<sup>20</sup> The case was then appealed to the United States Supreme Court and that body, in 1923, declared the law unconstitutional in so far as it applied to adult women.<sup>21</sup> The vote was five to three, Mr. Justice Brandeis not participating because his daughter had aided in the preparation of the brief. The Court considered the statute an infringement of freedom of contract and also maintained that the law fixed wages without regard to the value of the services rendered and that the status of women had been changed by the Nineteenth Amendment, which tended to equalize the bargaining power of men and women.

A few years later, in the Arizona<sup>22</sup> and Arkansas<sup>23</sup> cases, the Supreme Court again declared minimum-wage legislation unconstitutional. These decisions, together with those of several lower courts, caused many of the laws to be either annulled or greatly hampered in their application. The Massachusetts law, of course, was not affected. Many of the commissions in other states continued to function, cooperating with those employers who wished to apply the minimum-wage principle. In 1924 a Wisconsin federal district court granted an injunction restraining the commission from enforcing orders, holding the law to be unconstitutional.<sup>24</sup> The following year the legislature enacted a revised law known as the Oppressive Wage Act. This law prohibited the paying of an "oppressive wage" (defined as unreasonable and inadequate for the services rendered) to any adult female employee. For all practical purposes the previous minimum rate has continued to function for women as well as for minors.

The year 1933 saw a revival of minimum-wage legislation. By the close of the year 1934 sixteen states had enacted this type of legislation,<sup>25</sup>

<sup>19</sup> Arkansas, Massachusetts, Minnesota, and Washington.

<sup>20</sup> This reversal is partially explained by the fact that since Mr. Justice Robb was unable to sit at the first hearing because of illness, Mr. Justice Stafford of the United States Supreme Court sat in his place and voted to sustain the law. Mr. Justice Robb, however, sat at the rehearing of the case.

<sup>21</sup> *Adkins v. Children's Hospital*, 261 U. S. 525 (1923).

<sup>22</sup> *Murphy v. Sardell*, 269 U. S. 530 (1925).

<sup>23</sup> *Donham v. West Nelson Mfg. Co.*, 47 Sup. Ct. 343 (1927).

<sup>24</sup> *Folding Furniture Works v. Industrial Commission of Wisconsin*, 300 Fed. 991 (1924).

<sup>25</sup> *American Labor Legislation Review*, 24:180 (Dec., 1934).

applying only to women and minors of course, and the old non-mandatory Massachusetts law had been made mandatory. The National Consumers' League worked out a standard minimum-wage bill and this was used as a model for the laws enacted by New Hampshire, New Jersey, New York, Connecticut, and Ohio.<sup>26</sup> The attempt is not made to fix a minimum living wage. The state commission is empowered to investigate industries to determine whether wages are "fairly and reasonably commensurate with the value of the service or class of service rendered." An oppressive and unreasonable wage is defined as one "which is both less than the fair and reasonable value of the services rendered and less than sufficient to meet the minimum cost of living necessary for health." In establishing wage rates the commission and wage boards may consider, among other things, "the wages paid in the State for work of like or comparable character by employers who voluntarily maintain minimum fair wage standards." It was hoped that these provisions would do away with the constitutional objections to minimum-wage legislation expressed in the leading decision, *Adkins v. Childrens' Hospital*. It will be noted particularly that in the *Adkins* decision the Court objected to forcing an employer to pay a wage not commensurate with the value of the service rendered. The new laws provided that the wage should be commensurate with the value of the services rendered.

When in 1936 the Supreme Court by a five to four decision invalidated the New York State law,<sup>27</sup> students of social legislation were greatly surprised that legal opinion on this subject had remained stationary for thirteen years. The Court refused to distinguish between the "living wage" law invalidated in the *Adkins* case and the "living wage plus value of service" law of New York State and others. The Court refused to distinguish, but the following year when asked by the State of Washington to change its mind, the same court personnel did so, saying in *West Coast Hotel Co. v. Parrish* <sup>28</sup> that "the case of *Adkins v. Children's Hospital* should be, and it is overruled." Mr. Justice Sutherland, who had written the earlier decision, and three of his colleagues dissented.

Since the *Parrish* decision a few other states have passed minimum wage laws. At the present time Alaska, Hawaii, Puerto Rico, the District of Columbia, and twenty-six states have minimum wage laws, all but four of which apply only to women and minors.

In 1938 Congress passed the Fair Labor Standards Act, commonly

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<sup>26</sup> For text of New Hampshire, New Jersey, New York, and Utah laws, see *Monthly Labor Review*, 36:1259-1276 (June, 1933).

<sup>27</sup> *Morehead v. People ex rel. Tipaldo*, 298 U. S. 578 (1936).

<sup>28</sup> *West Coast Hotel Co. v. Parrish*, 300 U. S. 379 (1937).

known as the Wage and Hour Law. Under its constitutional authority to regulate interstate commerce, Congress has established minimum wage legislation covering all workers engaged in interstate commerce or in the production of goods for interstate commerce. With the liberal interpretation of interstate commerce now recognized in the decisions of the Supreme Court, the federal minimum wage law covers a large proportion of the gainfully employed except in service industries and agriculture.

The wage provisions of the law are a combination of the flat-rate minimum type of law and the wage-board type. During the first year 25¢ an hour was the minimum; during the six years from October 24, 1939, to October 24, 1945, the minimum was 35¢; and after that 40¢. At any time before 1945, however, the minimum wage for any covered industry could be raised by wage order up to 40¢ an hour. Seventy-one industry committees have been appointed and have recommended wages to the administrator for these industries. In each case the committee is charged with recommending the highest possible wage up to 40¢ an hour which will not substantially curtail employment. By 1943 every covered industry had a mandatory 40¢ an hour minimum wage.

The wage and hour provisions of the law are enforced by an administrator in the Department of Labor who has the authority to require standard records and to cooperate with state departments of labor in inspection and enforcement. If an employer violates the law the government can get a court order preventing him from doing so in the future or can prosecute him criminally. If the employer is convicted he may be fined up to \$10,000, and for a second offense, sent to jail for as long as six months. Furthermore, an employee can collect twice the back wages due him, plus court costs and a reasonable fee for the attorney.

The principle of the minimum wage has been generally accepted throughout the industrial world; and there is reason to believe that the tendency toward the fixing, whether by law or otherwise, of a rate below which no worker's wage shall be allowed to fall because of the depressing effect upon his standard of living, is no mere fad of the moment but an important aspect of a major social phenomenon of this industrial age. It therefore seems appropriate to pay some attention to the economic possibilities of the minimum wage.

Although some laws have been enacted which directly fix the flat minimum rate, the most popular as well as the most reasonable method is to delegate the fixing of rates to wage boards or commissions. These commissions are usually authorized to investigate the situation in a particular district or industry and then to establish a minimum rate for that district or



industry in the light of the information they have gained. Obviously the latter method is much the more flexible of the two, much the more easily adapted to changing needs and conditions.

One of the most important questions concerning minimum-wage legislation is that of the manner in which the minimum rate is to be determined. What standard or standards shall it be based upon? If it is to be a living wage, what constitutes a living wage? Is account taken only of the basic necessities of life or is some provision made for comforts and luxuries? Are men and women to be treated alike? Is the size of the family to be taken into account? These and other questions crowd in upon anyone who is interested in the problem of determining the minimum wage.

In England the general practice is to "level the wage for the whole trade in each district up to the standard of the best employer in the district." In America the states having minimum-wage laws have usually based the rates upon the standard of living, obviously a very different thing from the English practice. The standard of living is clearly not an easy thing to determine. In actual practice a budget is worked out and this must necessarily be a compromise. It cannot include all the items that the workers would like to have included, neither can it be cut down too low. That there is plenty of room for difference of opinion is well illustrated by the budgets drawn up by the various wage boards in Massachusetts. In 1917 the men's furnishings wage board drew up a budget amounting to \$10.45. Six months later the muslin underwear board drew up a budget of \$9.65. Another board in 1918 prepared a budget of \$12.50, and still another, a few months later, a budget of \$11.00. In the fall of 1919 two budgets were reported, one for \$13.00 and another for \$15.30.<sup>29</sup> The budget on the following page is offered as an example of those adopted by the various minimum-wage boards.<sup>30</sup> An examination of this budget reveals one important omission—an allowance for the heavy contingent costs of sickness, accidents, and unemployment. The \$.15 insurance item is probably for life insurance and is pitifully small.

Many employers contend that the condition of the business should be taken into account on the ground that otherwise some concerns might simply be unable to pay the wage. The counter argument is that an industry which is unable to pay a living wage is a parasite and ought to be pushed to the wall. Most of the laws in the United States ignore the question

<sup>29</sup> Arthur Lucas, "A Recommendatory Minimum Wage Law," *American Economic Review*, 14:99 (Mar., 1924).

<sup>30</sup> Barbara N. Armstrong, *Insuring the Essentials* (Macmillan, 1932), p. 70.

of ability to pay. The Rhode Island law, however, requires that the amount the industry can afford to pay be one basis for settling the wage rate. The early laws provided for a wage sufficient to cover the cost of living, but most of the new laws call for a wage that is "commensurate with the value of the service or class of service rendered." This was an attempt to meet objections of the court, particularly the objection raised in the Adkins case. The *Parrish* decision, however, makes either type of law constitutional. As previously stated, the federal law calls for setting a minimum wage for an industry which will not substantially curtail production. In this way the ability of the industry to pay is recognized. Presumably if the present minimum of 40¢ an hour is increased the same test will be presented to the industry committee.

## 1920 BUDGET—ARKANSAS

Board and room .....	\$8.00	Recreation .....	\$ .30
Clothing .....	3.00	Insurance .....	.15
Laundry .....	.45	Savings .....	.20
Carfare .....	.72	Incidentals .....	.33
Church .....	.10		
		Total .....	\$13.25

One of the most important problems involved in the minimum wage is that of the sub-standard worker. There will always be persons who for some reason, such as physical disability or mental incompetence, are unable to obtain work at the legal wage. Are these persons, although capable of doing something and earning part of their keep, to be shut out from all gainful employment with the possibility of their becoming a charge on the state? Most minimum-wage laws provide for the licensing by the commission of slow and infirm workers and others who are capable of earning something. Some laws in order to prevent abuse of the privilege specify the proportion of such workers to be allowed in a single establishment. The laws also take account of young and inexperienced workers, usually by naming the rate for minors and apprentices, and sometimes it has been found necessary to place restrictions upon their number. The federal wage and hour law provides for the employment of learners and handicapped workers at rates below the normal minimum but such departures from the minimum are carefully regulated by the administrator.

Although it is accurate to say that the principle of the minimum wage has been quite generally accepted, it is not accurate to say that it has met with universal approval.<sup>81</sup> It is argued by some that the minimum wage calls for payment of wages upon a new and unjustifiable basis, the basis of what it costs the recipient to live. A man's primary purpose in going into business, runs the argument, is to make a profit. If an employee is not worth \$18 a week to the business, she should not be paid \$18 simply because it costs her that much to live. If she is worth \$20 she should be paid that. And if she is worth but \$10 then she should be paid \$10. The employer cannot be forced to remain in a business that does not pay, and why should he be forced to pay his workers more than they earn? This point was emphasized by Mr. Justice Sutherland in rendering the decision of the Supreme Court in the *Adkins* case.

It must be admitted at once that this position is essentially sound. It is true that wages cannot be advanced without regard to the worker's productivity, that in the final analysis wages depend upon efficiency, and that wages cannot be paid unless goods are produced. It is true that under a system of private enterprise wages cannot be paid just because the laborers need them. It is true that under this system "each worker will receive in money wages the equivalent of his contribution to the product of industry, the amount of this contribution being equal to the productivity of the marginal man in his group." But the theory of the minimum wage is not necessarily at variance with this essentially sound fundamental principle. There are several factors to be taken into consideration which are sometimes overlooked.

When it is stated that wages depend upon productivity and when the economic law of wages is cited, it is assumed, or at least it should be assumed, that the labor market is a free, competitive market. The economic wage is the maximum that can be paid, not the wage that actually is paid under existing conditions. The fact that under the present system a laborer receives \$20 a week does not mean that \$20 measures the full value of the good that he has produced. Ordinarily the employer is in a much better position to bargain than is the employee, so much better that it is not only possible but probable that he will be able to force him down to a wage below the maximum economic wage. Particularly is this true of the unskilled and unorganized laborers for whose benefit the minimum wage is primarily intended. Minimum-wage laws may therefore, by doing

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<sup>81</sup> For an excellent summary of opinion on minimum-wage legislation, see Industrial Relations Section of Princeton University, *Minimum Wage Legislation in the United States* (1933).

for the laborer what he is unable to do for himself, i.e., by pulling his wages up closer to the maximum wage or the "full value of the product," aid rather than impede the working of the economic law of wages.

Another point that is brought forward by supporters of the minimum wage is that the law will itself tend to increase the productivity of the laborers, thus enabling their employers to pay them the higher wage without loss. It is argued, and undoubtedly with much truth, that the workers will be stimulated to greater effort and to greater efficiency. At the present time the employer pays a man "what he is worth," and he cannot afford to pay him more in the laborer's present state of efficiency. If the law requires him to pay more, the laborer will have to increase his efficiency or lose his job. There is also the possibility that efficiency will be increased in another way. One reason for low efficiency is low vitality; and one cause of low vitality is undernourishment, combined with the other conditions characteristic of extreme poverty. The higher wage will enable the laborer to buy more of the necessities of life, and it is by no means improbable that this will operate to raise his efficiency.

The efficiency of the employer, too, may be increased by the spur of a minimum-wage law. In the first place it will give him an added incentive to select the men best qualified to do his work since he cannot afford to hire any but the best workmen if he is required by law to pay a certain wage. Then every employer is constantly on the lookout to reduce his costs in order to keep his foothold in the competitive struggle; and as things are, great pressure is often brought to bear upon the labor costs. With a minimum labor cost fixed by law, the employer would be forced to utilize every ounce of ingenuity at his command in the effort to find other ways of cutting down his costs, and in so doing would probably hit upon new means to efficiency. Sidney Webb calls attention to a statement that appeared in the *Edinburgh Review* in 1835: "If from the discovery of the spinning frame up to the present, wages had remained at a level, and workers' coalitions and strikes had remained unknown, we can without exaggeration assert that the industry would not have made half the progress," and then goes on to say himself, "I do not see how any instructed economist can doubt, in the face of economic theory on the one hand, and of the ascertained experience of Victoria and Great Britain on the other, that the enactment and enforcement of a legal minimum wage, like that of an ordinary factory law, positively increases the productivity of industry."<sup>32</sup>

Two practical questions which arise in connection with the minimum

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<sup>32</sup> Sidney Webb, "The Economic Theory of a Legal Minimum Wage," *Journal of Political Economy*, 20:982-983, 985 (Dec., 1912),

wage have already been mentioned. One concerns the establishment which cannot afford to pay the minimum wage, which will have its profits wiped out if it does. The other concerns that group of persons who for some reason are not able to earn the minimum wage. We have seen that some laws require that the state of the industry be taken into account in fixing the wage. This is regarded as an unwise concession by some who hold that an industry which cannot pay a living wage is parasitic and should not be allowed to survive. As Sidney Webb says, "For an industry to be economically self-supporting, it must, therefore, maintain its full establishment of workers, unimpaired in numbers and vigor, with a sufficient number of children to fill all vacancies caused by death or superannuation. If the employers in a particular trade are able to take such advantage of the necessities of their work-people as to hire them for wages actually insufficient to provide enough food, clothing, and shelter to maintain them permanently in average health; if they are able to work them for hours so long as to deprive them of adequate rest and recreation; or if they can subject them to conditions so dangerous or insanitary as positively to shorten their lives, that trade is clearly obtaining a supply of labor which it does not pay for." <sup>33</sup>

There seems to be a good deal of logic in this position. A great many workers are employed in industry at the present time who do not receive enough to maintain them. Yet they are maintained. The only possible explanation is that they are assisted by others. Children who work are largely supported by their parents. Women who work are often supported in part by other members of the family, and particularly is this true of married women. Others are supported in part by charity. But the point is that a large number of laborers are being partially supported by other persons, many of whom derive their income from other industries. To a certain extent, therefore, some industries are bleeding other industries and also society in general.

There are also many whose less-than-living wages are not pieced out by additional income from other sources and who, because of the wretched conditions in which they are required to live and because of their inability to buy the food which they need to sustain them, are deteriorating. In this way labor is used up. When labor is used up, it must be replaced just as machinery must be replaced when it is used up. But there is a rather important difference between the two processes. In the case of machinery the enterpriser bears the cost of replacement, whereas in the case of labor he does not. He simply rings out the old and rings in the new. On the labor

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<sup>33</sup> *Ibid.*, p. 987.

market he finds a laborer ready-made and waiting for the job, a laborer whom some one else has paid the cost of producing. To the extent, therefore, that an industry fails to pay its laborers sufficient wages not only to maintain them in health but to produce an equal number of workers like them, to that extent it is existing at the expense of society; and it seems reasonable to hold that industries which cannot pay their own way should be permitted to wither and die.

No such harsh rule as this can be applied to human beings. Humane sentiments stand in the way. Laborers who are unable to earn a living wage owing to physical or mental weaknesses must, in a civilized society, be cared for somehow. It is argued that the minimum wage would throw this group of laborers out of work, placing the entire burden of their support upon society as a whole or upon some of its members; and that is, of course, exactly what would happen if the minimum wage were put into effect without any qualifications whatever, without any provision for exceptions. It is obviously better to allow these people to go on working and earning what they can, since what they produce is just that much gain to the wealth of the country, and since society is thereby relieved of part of the burden of supporting them. This is not incompatible with the minimum wage, as some of the countries have demonstrated by empowering their minimum-wage commissions to issue permits granting these persons the privilege of working for less than the stipulated amount. In administering such a law great care must be exercised to prevent abuses which would tend to perpetuate the very sort of exploitation that the minimum wage was expected to eliminate.

The minimum wage has been on trial long enough, and in enough different places, to give some evidence of its merits as an economic measure. The data are not sufficiently comprehensive to furnish conclusive answers to all the questions that have been raised in the foregoing theoretical discussion, but they do indicate that some of the fears raised by opponents of the minimum wage are to a great extent baseless. The early experiments in the United States had got far enough along to show that pertinent conditions in this country, dominated as it has been by "equal opportunity for all" and "individual enterprise," are not so different from conditions in the other industrial countries of the world as to warrant serious doubt that what has successfully functioned in those countries could successfully function here.

Reports from Great Britain and Australia indicate that the minimum wage has met very well the pragmatic test they have given it. There are, of course, so many factors affecting industrial conditions that it is not al-

ways easy to sort out causes and effects. For example, some employers in Australia feel that output has fallen in recent years but ascribe the decline to trade-union policies rather than to minimum-wage awards. Wages may rise or fall in consequence of any one of a number of factors or of several factors combined. Where it has been possible to isolate the factors to some degree, the results have been such as to support the minimum wage. Official statements issuing from Great Britain indicate that the establishment of the minimum wage there has brought about increases in wages without any decrease in the number of persons employed and without any decrease in efficiency. There has been no movement on the part of the employers to shift their establishments to sections where the minimum-wage law is not in effect, such as Ireland.<sup>34</sup> The testimony of the chief factory inspector at Melbourne, Australia, indicates that essentially the same results have been obtained from the minimum-wage law in Australia.

One writer, after a careful examination of the working of the Massachusetts minimum-wage law in which he assembled some detailed data, concluded: "They [the data] point to the conclusion that the minimum wage decrees have been important factors in raising wages." And concerning the better-paid workers the same writer stated: "In most industries . . . the effect of the decrees in raising wages of the better-paid workers is very noticeable."<sup>35</sup> The United States Bureau of Labor Statistics found that average weekly earnings of women in retail stores in Oregon were 8.6 per cent higher after the minimum-wage law went into effect than before, in spite of a business depression which brought an 8 per cent decrease in the sales of these stores;<sup>36</sup> that the law did not result in the minimum wage becoming the maximum, the proportion of women getting more than the legal minimum being greater after the law went into effect than before; and that women workers were not thrown out of work to be replaced by men.<sup>37</sup>

Other data, although admittedly meager, support the general contention that the state minimum-wage laws in the United States were beneficial in their effects upon the workers and the industries covered. Commons and Andrews conclude a comprehensive study of the workings of the minimum

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<sup>34</sup> Cf. Richard H. Tawney, *The Establishment of Minimum Wage Rates in the Tailoring Industry* (Bell and Sons, 1915); Dorothy M. Sells, *The British Trade Boards System* (King and Son, 1923).

<sup>35</sup> Arthur Lucas, "A Recommendatory Minimum Wage Law," *American Economic Review*, 14:48 (Mar., 1924).

<sup>36</sup> U. S. Bureau of Labor Statistics, *Bulletin No. 176*, p. 33 (1915).

<sup>37</sup> *Ibid.*, p. 8. For a detailed treatment of the Oregon law, see Victor P. Morris, *Oregon's Experience with Minimum Wage Legislation* (Columbia University Press, 1930).

wage by saying, "Among the better-established results of minimum wage legislation, therefore, may be mentioned (1) that it has raised wages; (2) that minimum wage rates do not in general tend to become maximum rates; (3) that it does not necessarily force workers out of industry; (4) that it does not unduly handicap employers; (5) that it does not undermine trade-union organization; and (6) that it does not decrease efficiency."<sup>38</sup>

In a recent article, Harry Weiss, Director of the Economics branch of the Wage and Hour Division, gives some interesting facts on the working of the industry committees appointed under the Fair Labor Standards Act.<sup>39</sup> He estimates that 1,600,000 covered workers were paid less than 40¢ an hour at the time that the 40¢ recommendations were made. A much larger number of workers received increases to bring them to the recommended minimum wage at approximately the date of industry committee meetings. The federal law certainly brought higher wages to millions of workers in the United States but it is not possible to draw accurate conclusions regarding the economic effects of minimum-wage action. Much of the work of the Wage and Hour Division was done during a period of accelerated economic activity due to the war and as Mr. Weiss concludes, "This makes it difficult to segregate the effects of Wage and Hour Division action though it has also made it much easier to absorb the cost than might have been the case during more normal periods of activity."

That the minimum-wage laws now in operation could be improved goes without question. Abuses in their administration are not unknown, the provision made for many of the workers has been inadequate, and discriminations have been frequent enough to furnish the critics with a goodly supply of ammunition. Certain problems, such as the control of apprentices and minors and the granting of permits to the partially unemployable, have not been fully solved. Mistakes and unsolved problems are to be expected when a complex social experiment is in progress, but it seems clear that enough benefits have already resulted to warrant continuing the experiment on a broader scale.

#### SAFETY AND HEALTH LEGISLATION

We have already had occasion to consider the toll taken by industrial diseases and accidents.<sup>40</sup> Labor has found that it could do very little in

<sup>38</sup> John R. Commons and John B. Andrews, *Principles of Labor Legislation* (Harpers, 1936), p. 74

<sup>39</sup> Harry Weiss, "Minimum Wage Fixing under the United States Fair Labor Standards Act" *International Labour Review*, vol. LI, No. 1, January, 1945.

<sup>40</sup> See Chapter III.



the way of protecting itself against these hazards. With a few honorable exceptions, the employers as a group have done little on their own initiative. They have had to be pushed and prodded by the state before they would expend the thought and the time and the money that are required to reduce industrial hazards. On the whole, the state has done its part very well, having handled this problem with greater skill and intelligence, probably, than any other agency connected with industry.

State action has taken the form of prohibition, regulation, and compulsory insurance. The latter method will be discussed in connection with the general policy of social insurance. Prohibition, as might be expected, is resorted to only when no other remedy is in sight. Prohibition may take the form either of excluding from industry in general or of excluding from particular industries such persons as are considered to be peculiarly susceptible to accident and disease. This method has been most frequently utilized on behalf of children. The first child-labor law in the United States was passed in 1836 by the state of Massachusetts. It prohibited the employment of children under fifteen in manufacturing establishments unless they had attended some public or private day school for at least three months during the preceding year. Other states soon followed suit, but as was so often the case with the new social legislation, the first attempts proved to be abortive. Many organizations got behind the movement, however, and as it gathered momentum considerable progress began to be apparent. At the present time every state in the union has a law prohibiting the employment of children in one or more kinds of work. Only thirteen states, Puerto Rico, and Hawaii, however, prohibit the employment in factories of children under sixteen years of age. Three states and Puerto Rico prohibit the employment of children under sixteen during school hours.

The great need has been for federal legislation. The state laws developed rather slowly; some states were much more stringent than others, and these were placed at a competitive disadvantage. The need for either uniform state legislation or federal legislation soon became painfully apparent, and in recognition of this need Congress enacted in 1916 a law prohibiting the transportation in interstate commerce of the products of factories in which children under specified ages had been employed, except under specified conditions. The specifications were that no children under fourteen could be employed at all, that no children under sixteen could be employed more than eight hours a day or six days a week or at night, and that no children under sixteen could be employed in the mines. In 1918 this law was de-

clared unconstitutional by the United States Supreme Court on the ground that it constituted an undue exercise of the commerce power.<sup>41</sup>

A year later, in 1919, Congress enacted another law with the same provisions, having recourse this time to its taxing power. This law placed a 10 per cent tax on the annual net profits of any concern employing children in violation of the standards set by the law. Notwithstanding the belief of many that this law could survive, inasmuch as the same method had been used on several other occasions, the Court for the second time declared a federal child-labor law unconstitutional. The Court declared "that the provisions of the so-called taxing act must be naturally and reasonably adapted to the collection of the tax, and not solely to the achievement of some other purpose plainly within state power."<sup>42</sup>

Finding the door shut in their faces for the second time, the supporters of child-labor legislation turned to the constitution itself. In 1924 Congress enacted a constitutional amendment granting to itself the power to regulate the labor of children under eighteen years of age. The states were slow to respond at first, many of the legislatures voting down the proposal to ratify, but as there was no time limit on the amendment its proponents have kept up the fight. The movement for ratification gained momentum following the business collapse of 1929, and at the end of 1934 the total number of states that had taken favorable action was twenty.<sup>43</sup> At the present time twenty-eight states have ratified the child labor-amendment. Interest in the amendment lagged after the passage of the Fair Labor Standards Act and with the advent of the defense program in the late thirties.

Although a federal child-labor law was sorely needed, it can be said that the accomplishments of the states were by no means negligible. With the fourteen-year age limit established in practically all the states and with a strong and well-mobilized sentiment for the elimination from industry of all children under sixteen, the situation was certainly a great deal better than it had been a few decades before. Physical examinations are required in a great many states, and although the effectiveness of this measure depends almost entirely on the character and the competence of the physician in charge, it is obviously a step in the right direction. Something has also been accomplished through the medium of educational requirements. Most states at the present time have established certain standards of knowledge which children must attain before they may be employed. These standards

<sup>41</sup> *Hammer v. Dagenhart*, 247 U. S. 251 (1918).

<sup>42</sup> *Bailey v. Drexel Furniture Co.*, 259 U. S. 20 (1922).

<sup>43</sup> *American Labor Legislation Review*, 24:192 (Dec., 1934).

vary among the different states, of course, and there are several states that have none at all.

The Fair Labor Standards Act of 1938 made it illegal to employ children under sixteen years of age in the production of goods to be shipped in interstate or foreign commerce. An exception can be made for the employment of children fourteen and fifteen years old in nonmanufacturing and nonmining industries outside school hours, the conditions of this employment being determined by the Children's Bureau. Children sixteen and seventeen may work only in those industries which the Bureau finds to be nonhazardous and nondetrimental to health. All child labor provisions of the law are administered by the Children's Bureau.<sup>44</sup>

A most important phase of the problem is the prohibition or regulation of the employment of children in certain occupations that are peculiarly affected with dangers to the child. We refer to the various forms of industrialized agriculture such as sugar-beet and cotton raising, the various street trades, domestic service, canning, and different kinds of home work. Even the ordinary farm is not the haven of health and moral uplift that it is often pictured to be. The chief difficulty in any attempt to control the employment of children in these occupations lies, of course, in the matter of administration; and the belated development of industry in the South has contributed its share to the complexity of the problem. It is easily seen that even before the period of the Second World War the regulation of the employment of children was an important problem.

The shortage of workers for vital industries during the Second World War, as well as the draft, brought millions of teen age youths into full or part-time jobs and into the armed forces. In April, 1944, 1½ million fifteen to nineteen year old boys and girls were in the armed forces and approximately 5 million were working. About ⅓ of the civilian workers were still attending school.<sup>45</sup> Undoubtedly, a large number of the teen-age youths left school to take temporary jobs, or to join the armed forces, and will return to school now that the war is over. There will, however, be a number of persons in this age group who, having been able to earn high incomes in war industries, or perhaps feeling that they have lost too much time from school already, may not care to go to school again. The federal and state governments will then need more than mere protective legislation for these young people. It will be necessary to encourage them in every way possible to spend the time necessary for completing their educations.

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<sup>44</sup> U. S. Bureau of Labor Statistics, *Bulletin No. 694*, vol. I, p. 19 (1941).

<sup>45</sup> *Monthly Labor Review*, 60:6-8 (Jan., 1945).

In many states women are excluded by law from employment in certain industries. The reason usually given is that being physically weaker than men they are less able to resist occupational diseases; and it is also thought that they need special protection on moral grounds. They constitute a special case, too, in that during the period of pregnancy they need protection not only for their own sake but for the sake of their unborn children as well. Two occupations from which women are usually excluded are mining and working in saloons, although the latter rule no longer has any great significance. As a matter of fact, both of the restrictions are rather superfluous in America because women have seldom been employed in the mines. Several states have forbidden the employment of women on the cleaning of moving machinery, and a number prohibit women from working in occupations which entail the repeated lifting of heavy weights. Ohio prohibits the employment of women in quarries, blast furnaces, smelters, shoe-shining establishments, bowling alleys, pool rooms, freight elevators, baggage or freight handling, trucking, and work involving the operating of certain kinds of emery and other polishing wheels. Wisconsin likewise has extensive restrictions. A number of states prohibit the employment of women in any occupation during the few weeks preceding and the few weeks following childbirth.

Some states also have statutes prohibiting the employment of men under certain conditions. These laws are never general in their scope but apply only to special types of individuals who for one reason or another are regarded as unsuited to the occupation in question. Sometimes the intent is primarily to protect the workers' own health and they are excluded on physical grounds. Sometimes they are excluded because they lack the necessary technical qualifications, usually in order to protect the other workmen in the plant. Several states require that men doing work in compressed air shall be found to be physically qualified. A number of states have lead laws which call not only for an apparent immunity to the "lead diseases" as evidence by a physical examination before employment begins, but also for reexamination to determine whether the workmen are showing any signs of succumbing to disease. In some states freedom from contagious disease is required to employment in certain occupations. As was pointed out earlier,<sup>46</sup> twenty-eight states have passed laws providing for compensation for occupational diseases, but it must be remembered that thirteen of these laws cover only specific diseases.

Much more numerous are the laws requiring that workmen have certain technical qualifications before being allowed to work in certain desig-

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<sup>46</sup> See Ch. III.

nated occupations. Sometimes these laws are passed in the interest of the public, as when they apply to plumbers, electricians, railroad employees, or others upon whose competence depends the safety or health of many persons. More common are laws which are framed primarily to protect fellow-employees, as for example those applying to workers in the coal mines.

An attempt is made to provide protection to life and health not only by excluding certain classes of workmen from certain occupations under certain conditions, but by excluding dangerous materials. Undoubtedly the most notable example of this is the almost universal prohibition of the use of poisonous phosphorus in the match industry in consequence of the discovery that the disease *phosphorus necrosis* attacked employees where poisonous phosphorus was used. International cooperation on a large scale was exhibited in 1906 when a large number of European countries signed a treaty calling for the absolute prohibition of the manufacture, importation, or sale of matches made from white phosphorus. Many other countries later ratified this treaty. In 1912 the Congress of the United States placed a two cent per hundred tax on matches containing white phosphorus, and in addition to levying this prohibitory tax forbade their import and export. A number of countries have legislation prohibiting the use of lead in paints but as yet the United States has not taken this precaution.

Far more extensive in its application is legislation calling for the regulation of industries in the interest of health and safety. It has been necessary, of course, to develop special codes for the different industries because of the widely divergent conditions therein encountered. Most of the states in the Union now have laws prescribing minimum conditions of safety in factories. The movement started in 1877 when Massachusetts enacted the first American law having to do with factory safeguards. As machinery is probably the most important cause of accidents in factories, it is natural that most of the factory safety laws should concern themselves with machinery. Legislation demanding protection against fire and calling for proper lighting and ventilation is also found in most of the states. A number of states authorize factory inspectors to order changes in any heating apparatus which is found to endanger the workers' health, and sanitary measures covering toilet and dressing-room facilities are also found on the statute books of many states.

Sweat-shop legislation, although desperately needed, has proved to be rather unsatisfactory where it has been tried. In 1885 the state of New York attempted to deal with the matter by enacting a law prohibiting the manufacture of cigars and other tobacco products in tenement houses of the first class. This law was declared unconstitutional, the court holding

that it constituted an abuse of police power. There was nothing to do but turn to regulation, and regulation is unsatisfactory because it is practically impossible for inspectors to cover all the tenement houses of a large city with any degree of thoroughness. Some relief seemed to be in sight in 1913 when New York again essayed the prohibitory method and enacted a law forbidding work in tenement houses on certain products. This law was upheld by the courts, but the problem of enforcement again became serious; and though the results were more satisfactory than when entire reliance was placed upon regulation, the law was not altogether effective.

In December, 1944, eleven states and Puerto Rico had laws which enabled them to prohibit industrial homework, but even some of these states have never chosen to do so. The federal government through the Wage and Hour Division of the Department of Labor has recently taken action in controlling industrial homework. As part of the enforcement machinery, the administrator has ordered restrictions upon this type of work that presage the ultimate abolition of the practice in the principal industries in which it has flourished for years. Some increases in industrial homework were brought about by the war, but it seems likely that, in the future, the practice which is so difficult to regulate will gradually cease.<sup>47</sup>

We have noted that mine accidents in America are unusually numerous, being much more frequent than in any other mining country in the world. The mining states have enacted various laws covering such matters as ventilation, poisonous gases, machinery, and the like, but have left untouched a most serious danger which could easily be removed. The explosion of coal dust has sent many a man to his last resting-place. Although it has been amply demonstrated that sprinkling the mine with noninflammable rock dust gives the needed protection, the somewhat startling fact is that practically nothing has been done by the states to require the use of this safeguard. A forward step in the direction of health and accident protection was taken when the Federal Bureau of Mines was established in 1910. With no compulsory powers, its function being simply to investigate, this body has nevertheless contributed greatly to the development of an intelligent interest in methods of preserving the health and safety of the mine workers. The Federal Mine-Inspection Act of 1941 gives to the Bureau additional powers of investigation and recommendation upon the problems of safety and health conditions in the nation's coal mines. The

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<sup>47</sup> R. Crawford and A. Bercowitz, "Control of Industrial Homework" *Monthly Labor Review*, 58:1145-1158 (June, 1944).

hope is that from the data collected Congress may intelligently prepare safety legislation.

Most of the legislation concerning transportation is federal, since most transportation is interstate or international. One of the most significant and most necessary pieces of legislation ever enacted to protect the interests of any group of workers was the Seaman's Act of 1915. Before this act was passed seamen had worked under conditions bordering on slavery. Although some of the most important provisions of the act had to do with personal freedom, there were several clauses which contributed greatly to the workers' safety and comfort. A full crew was called for, and also lifeboats, certified lifeboat men, and a certain percentage of able seamen.

The fact that accidents on the railroads are numerous and to a very large extent unnecessary is well established. Much has been done by the federal government and also by the states, but the accident total is still appalling. Congress has passed numerous laws dealing with safety on the railroads. The act of 1898 made the use of automatic couplers mandatory, also the use of the power brake and the installation of appliances for operating the train brake system. Then in 1908, one attempt of this nature having been frustrated by the courts, Congress passed the Employers' Liability Act providing that every railroad engaging in interstate or foreign commerce should be liable for damages to any person suffering injury or death while employed by it in such commerce. The Hours of Service Act (1907) in limiting the number of hours of trainmen not only protected the men from overstrain but reduced the possibility of accidents. Several other acts followed, the most important of these being the Esch-Cummins Act of 1920, which among other things empowered the Interstate Commerce Commission to require any railroad to provide itself with safe facilities for the performing of its car service.

Characteristic of these first laws regarding health and safety, as of all the early excursions into the field of social legislation, was a great inadequacy. Too often they were enacted with only the most flagrant abuses in mind and too often, also, the interested organization and interested individuals have allowed their zeal to evaporate as soon as the laws were placed on the statute books. The matter of enforcement, so these trusting souls seemed to feel, would more or less take care of itself. Another cause of ineffectiveness has been the technical incompetence of the legislatures to deal with the intricate problems involved, and the haste with which, apparently, they have tried to get them off their hands.

Moreover these laws have been largely specific, passed to meet the requirements of specific situations; whereas for a century past industry itself has been undergoing one change after another in incredibly swift succession. No wonder the laws have been out of date almost before they were passed. Some of the states which have had a more progressive attitude toward labor legislation, among them New York, Ohio, and Wisconsin, have established industrial commissions with considerable power in the administration of labor laws. The legislature enacts a law laying down the broad principle for dealing with a certain class of situations, and the commission fills in the administrative detail to meet the individual requirements of the various situations as they arise. Thus it is possible not only for the particulars of the law to be framed by persons who have the technical qualifications and the time to work them out in a scientific manner but also for modifications to be made in accordance with oncoming changes in industrial conditions. Although there is plenty of room for more and better laws protecting the health and safety of industrial workers, probably the most needed improvement is administrative machinery of the general type already marked out by the more progressive states.



## CHAPTER XX

### MEETING THE WAGE-EARNER'S GRIEVANCES

*(Concluded)*

#### SOCIAL INSURANCE

ONE of the most important projects connected with labor that has found its way into state usage in recent years is social insurance against the calamities of life. Here an ounce of prevention may be worth a pound of cure, but even with preventive measures developed to the last degree—as assuredly they are not now—there will still be illness, there will still be accidents, there will still be unemployment, and there will still be old age. To the risks which men have always had to face, modern industry has added many more. The idea behind social insurance is that the risks ought to be distributed since the laborer is of all men the least able to meet them.

It is a very significant and somewhat shocking fact that despite great progress in the direction of protecting the worker from industrial accident, despite all the safety laws that have been enacted, despite the greater and greater attention given to safety by both employers and employees, the number of industrial accidents in the United States is growing. The reason for this is undoubtedly to be found in the increasing mechanization of industry, which makes for greater specialization, monotonous work of a routine nature, and increased use of dangerous materials. Men will never become machines themselves no matter how completely industry becomes mechanized. As long as the human element is present in industry, and so far as we can see it always will be, industrial accidents will continue to take their toll.

There does seem to be some indication of progress in the matter of lessening industrial diseases, although certainly not enough to remove the need for some kind of sickness insurance. Old age is a greater risk than ever, for on the whole modern industry calls for the younger men; and as if it were not enough to shut out the old, industry does more than its fair share to get them ready for the scrap heap. Also the recent depression has shown rather conclusively that we still have a long way to go before unemployment can be eliminated. These various risks are present and they seem to be increasing in spite of all that has been done to reduce

them. In so far as they cannot be eliminated, the obvious substitute for elimination, and apparently the only substitute, is to distribute the burden of bearing them among a very much larger group.

Until 1935 the only social risk covered by insurance in this country was that of industrial accident and disease. In that year, however, Congress passed the Social Security Law, an almost revolutionary piece of legislation, designed to provide insurance for the risks of unemployment and old age. Now only non-industrial illness remains uncovered by state or federal social insurance. Although the details of the several programs can best be discussed as individual topics, it seems wise to give a brief summary of the Social Security Law itself so that the reader will have a comprehensive view of that important piece of labor legislation.

Many students of labor economics had for many years urged upon the states and the federal government the need for social insurance. Often denounced for advocating such "radical" measures, these men and women continued to develop plans and legislative proposals for meeting the social needs they observed among the great group of working people. The depression of the 'thirties made the public and Congress more conscious of the haphazardness of the outmoded methods of old-age and unemployment relief then found in this country.

Recognizing this growing interest in security, President Roosevelt told Congress in June, 1934, that he expected to propose additional measures for protection against the major vicissitudes of life which result in destitution and dependency for many individuals. The same month he appointed the Committee on Economic Security, charging them to study the problem of economic security and submit recommendations for Congress. The findings of this committee, entitled "Social Security in America," is a comprehensive study of the factual background of the committee's recommendations.

In August, 1935, the President signed the Social Security Act, thus adding this country to the majority of the civilized nations of the world that already had such laws in operation.

The Act, as finally passed, was a combination tax and social insurance law with a number of other sections dealing with social legislation not ordinarily considered social insurance. The three principal parts of the law, as we shall consider in detail later, have to do with unemployment compensation, old-age retirement, and grants to states to aid in carrying on welfare and health functions. The two sections of the original law having to do with taxes covered the first two plans mentioned above.

Unemployment compensation and old-age retirement insurance are

considered later in this chapter where the history of such plans in this country and abroad are discussed. They are the social insurance features of the social security law. The grants-in-aid, however, are an important part of the Act. Subject to numerous restrictions, states may receive federal financial aid for their programs of relief for the indigent aged, dependent children, and dependent blind. The restrictions are not onerous, providing only for minimum standards of good administration. State and local contributions are matched by the federal government with a limit on the amount the federal government will pay in each instance. Grants-in-aid to the states are also made for improvement in maternal and child health services, services for crippled children, and for public health work.

Administering the law are three separate federal agencies: the Children's Bureau of the Department of Labor which administers the child welfare and aid to crippled children parts of the law; the U. S. Public Health Service which administers the public health section; and the Social Security Board, a new board established by the Social Security Law, which handles old-age insurance, public assistance, and employment security sections of the law.

The constitutionality of this inclusive legislation was immediately challenged in the courts. No one doubted the authority of the federal government to give grants-in-aid to the states to aid them in carrying out welfare and health projects, but there were serious doubts concerning the power of Congress to establish an old-age retirement system and to tax employers of eight or more in an effort to get the states to adopt unemployment insurance laws. The first of these doubts was dispelled when in the case of *Helvering vs. Davis* (301 U. S. 619, 1937) the Court held that Congress may spend money for the general welfare and that the tax set up to obtain money for the retirement insurance was a "valid excise or duty upon the relation of employment." The unemployment compensation sections of the Social Security Law were held valid in the case of *Steward Machine Company vs. Davis* (301 U. S. 548), and state unemployment compensation laws, passed to obtain the benefits of the federal law as described later in this chapter, were upheld in the case of *Carmichael v. Southern Coal and Coke Company* (301 U. S. 495).

In 1939 the Social Security Law was amended chiefly to make the tax section of the original law a part of the Internal Revenue Code, and in certain fundamental aspects to change the old age insurance features of the Act. Ten years is a short time in the history of social legislation. Often that much time was required to get one state interested in some modest piece of social legislation; yet, as Chairman Altmeyer of the Social Security

Board wrote recently, "In the ten years since August 14, 1935, when the Social Security Act became law, the United States has built a comprehensive system of old-age and survivors insurance and Federal-State systems of unemployment insurance and public assistance in all the states and territories."<sup>1</sup>

We now turn to a consideration in more detail of the four chief parts of social insurance, the first two of which are not included in the Federal Social Security Act. In our consideration of all types of social insurance we shall give some attention to the experiences of certain foreign countries because out of the experience of some of these countries our own laws have developed.

### (a) *Workmen's Compensation*

To understand the development of workmen's compensation it is necessary to know what the common law says concerning the responsibility for industrial accidents. The basic principle of the common-law doctrine is that "the employer is liable only in case he is at fault; that is he must have been negligent in some respect and this negligence must have been the proximate and sole cause of the accident." Otherwise the employer is freed of all responsibility. Since it was very difficult, naturally, to show that the employer was entirely to blame and the employee not at all, little relief was to be had so long as workmen had to depend solely upon the common law.

It is generally accepted that no matter how great pains the employer may take to protect his employees, some accidents are bound to occur. It seems that nothing can be done about these accidents, and they are said to be due to the hazards of the business. For an accident of this kind the injured employee cannot obtain damages. This is called the principle of assumption of risk, and it applies if it can be shown that the dangers existed when the employee took the job and that he was aware of them at that time. In general the courts have held that the employee must be presumed to know of the risks of the business. Some courts have gone so far as to hold that even though the employer has been negligent, has left machinery unguarded, has failed to abide by the law requiring safety devices, the workman is not entitled to damages if he has known these things and has continued to work in spite of them. It will not help that he has called the employer's attention to the dangers existing in the plant, in fact it will injure his case by the evidence it gives that he was aware of the dangers

<sup>1</sup> A. J. Altmeyer, "The First Decade in Social Security," *Social Security Bulletin*, vol. 8, No. 8, p. 1 (Aug., 1945).

while continuing at work. In other words, he voluntarily accepted these additional risks of the business.

Then there is the fellow-servant rule, which also tends to reduce the employee's chances of recovering for an accident. The employee must not only establish the employer's responsibility for the accident, he must also prove that no other employee or group of employees had anything at all to do with it. This rule was definitely formulated in 1842 by Chief Justice Shaw in the case of *Farwell v. Boston and Worcester Railroad* (Mass.).<sup>2</sup> An engineer lost a leg through a switchman's failure to change a switch. The court held that the engineer should know that other employees would probably be negligent, and that when he accepted employment he voluntarily agreed to assume that risk of the occupation along with the others. This reasoning was pretty generally accepted and formed the basis of numerous decisions, although as industry developed the rule was relaxed somewhat. In some states, for example, the employee who supervises the work is now held to be the employer's representative and negligence on his part is treated as if it were the employer's own.

Finally the employee himself must come into court with clean hands, for his case is well-nigh hopeless unless he can acquit himself of any least responsibility. It is not enough to show that the employer's negligence was the chief cause of the accident; he must prove that he himself did not contribute to it in any way whatever or he has little chance to recover damages. This is known as the principle of contributory negligence.

It can easily be seen from the foregoing that the employee would be apt to seek more profitable ways of spending his time than in attempting to collect damages for an injury sustained in the course of his work. Add to the obstacles already mentioned the fact that the employee must usually go to court and sue his employer, and the difficulties become almost insurmountable. The money cost of the court suit would seem prohibitive to a laboring man. So would the cost in terms of the ill-will which would be aroused in the employer. Sometimes the case could be settled out of court, and usually in this event the employee was only too glad to accept whatever was offered.

Common-law relief is based upon an unworkable theory, the theory that the responsibility for industrial accidents can be fixed. This might have been possible to some degree when industry was on a simple craft basis, but it is altogether out of the question today. Workmen's compensation does not attempt to place responsibility except in the broadest, most general

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<sup>2</sup> *Farwell v. Boston and Worcester Railroad Co.*, 4 Metcalf (Mass.) 49 (1842).

way. It simply selects the employer as the one best situated to enforce safe conditions in industry. This is done by requiring him to assume direct financial responsibility for the loss in earning power occasioned by the industrial accidents in his plant. Since all the employers are affected, or supposedly so, in the same way, they can pass this cost on to the consumer in the form of higher prices. In other words, the accident cost is simply treated as one of the costs of producing the commodity. The employer is expected to insure, in fact in most cases is required to insure; and since his premiums are based upon his accident rate, it is expected that he will try to reduce that rate just as he is constantly trying to reduce his other costs of production. Thus, in addition to furnishing relief to injured workers, workmen's compensation is expected to act as a stimulus to the promotion of safety.

When the first workmen's compensation act was passed by Germany in 1884, it was a part of Bismarck's general program for building a strong state rather than as the outgrowth of any great desire to ameliorate the condition of the workers. The law has been amended and extended on numerous occasions until now it covers practically every industry in the country. Great Britain enacted a compensation law in 1897 which has also been amended until it covers all employments and all injuries arising out of and in the course of employment. Great Britain was the first country to take legislative cognizance of the responsibility of industry for industrial diseases when in 1906 she passed a law which made six maladies most commonly contracted from occupations compensable in their regular schedule of insurance. Today the principle of workmen's compensation is generally accepted throughout the entire industrial world.

Although dissatisfaction with the common-law method of handling industrial accidents had been apparent for many years, the United States was slow to introduce any fundamental change. In the early part of this century a few attempts were made to deal with the problem, but these laws were mostly quite narrow in scope and in several instances they were declared to be unconstitutional. The first important compensation law was enacted by New York in 1910 and was declared unconstitutional by the highest state court in the following year. In 1911 a number of other states enacted compensation laws. The movement spread rapidly. By 1920 all but seven of the forty-eight states had compensation systems. In 1921 Georgia enacted a compensation law, and Missouri followed suit in 1925 and North Carolina in 1929. Alaska, Puerto Rico, Hawaii, and the Philippines have also enacted compensation laws. At the present writing there is but one state, Mississippi, without such a law.

When the first attempts to legislate were frustrated by the courts, several of the states, among them New York, Ohio, and California, adopted constitutional amendments providing for compensation laws. Workmen's compensation was given considerable impetus in 1917 when the United States Supreme Court in three important decisions placed its stamp of approval upon the principle involved. The question at issue in the New York case was whether the law deprived the employer of liberty and property guaranteed him by the Fourteenth Amendment, and the Supreme Court upheld the law on the ground that it was a reasonable exercise of the state's police power.<sup>3</sup> In the second important decision of the year the Iowa law was upheld by a reference to the New York decision. In the third case the state insurance fund was at issue. The employer was required to pay premiums to the state fund, out of which the workmen were then paid by the state. The Supreme Court upheld this method of payment on the ground that the matter of compensation for accidental injuries with resulting loss of life or earning capacity to men employed in hazardous occupations is of sufficient public moment to justify making the entire matter of compensation a public concern, to be administered through state agencies.<sup>4</sup>

In 1916 Congress enacted a compensation law covering all federal civilian employees, to replace the 1906 law which was quite limited in its application. In 1927 it passed another important compensation law, primarily to protect longshoremen engaged in loading and unloading vessels, but covering a number of related trades and crafts such as painters and carpenters. In 1928 Congress passed a compensation law covering the private employees in the District of Columbia, numbering approximately 60,000. One of the most serious omissions at present is that transportation workers engaged in interstate commerce are not covered by a compensation act. There are more than a million and a half workers affected by this omission. The employers' liability law passed in 1908 brought a big improvement over the former situation, but the old idea of fault of master and servant still controlled. Congress has not been altogether to blame, however, as the organized railroad men have not been particularly enthusiastic about workmen's compensation. The large prizes received in the form of court awards, although few in number, have undoubtedly been an important factor in making the workers somewhat reluctant to accept a compulsory compensation act.

In practically every state some kind of insurance is required. Several different methods are available: state funds, stock companies, mutual asso-

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<sup>3</sup> *New York Central R. R. Co. v. White*, 243 U. S. 188 (1917).

<sup>4</sup> *Mountain Timber Co. v. Washington*, 243 U. S. 219 (1917).

ciations, and self-insurance. The last-named method is permitted only within definite limitations, and some states prohibit it altogether. Some of the state funds are competitive, that is the employer may insure with the state or with a private company and so the state must compete with private companies for the business; but a number of state funds are exclusive, that is the employer has no choice but to insure with the state. Some states do not furnish insurance at all, in which case the employer must insure with a private company or, the state permitting, may furnish the insurance himself. The system of state funds has been fought quite vigorously by the private insurance companies but in spite of this opposition has made some headway.<sup>5</sup>

One of the most important questions connected with workmen's compensation and one that has not been handled altogether satisfactorily is the question as to what workmen are to be covered. A number of groups are usually excluded, the chief of these being workers in non-hazardous, agricultural, domestic, public, and casual occupations, those not engaged in the regular course of the employer's business, and those in employments not conducted for gain. About one-half of the acts limit the application of the compensation law to employers having a specified number of employees. By gradual amendments, however, this number has been reduced to three, four, and five workers in most of the acts. It is more than five in only seven laws, and sixteen is the largest number required.<sup>6</sup>

Many of the American states have modeled their statutes on the British law, which provides that all injuries arising out of or during employment must be compensated, excepting only those resulting from intoxication or wilful intention. Wisconsin has the special provision that the injured workman's compensation shall be increased by 15 per cent where the employer has failed to observe the safety laws, and cut 15 per cent if he himself has failed to use the safety devices.

The relation of occupational diseases to compensation is a question which has aroused considerable interest. It is particularly important where there is no health insurance, as in the United States. It is obvious, of course, that workmen's compensation should not be expected to cover all illness. The causes of illness are not always clear and it is often difficult to determine whether a disease is occupational or not. There are, however, certain illnesses that may be traced to industry just as certainly as industrial accidents,

<sup>5</sup> For a statement of the case in favor of an exclusive state fund, see *American Labor Legislation Review*, 29:170-177 (Dec., 1939).

<sup>6</sup> For an estimate of the number of workers covered by the various state acts, see Barbara N. Armstrong, *Insuring the Essentials* (Macmillan, 1932), p. 254.



and these should be so charged. At the beginning no American law made specific provisions for occupational diseases. Today thirty-two of the American acts provide for some occupational disease compensation.

Payments under workmen compensation laws consist of medical benefits, benefits to compensate in part for loss of earning power, and benefits to be used to rehabilitate the injured worker.

In most states medical care must be provided for the injured worker from the time of the injury or at least from the time the employer has actual knowledge of the injury. Not only will prompt medical attention often benefit the worker by reducing the severity of the injury but in so doing will also confer an economic benefit upon society as a whole. Like the other phases of workmen's compensation in the United States, however, the medical service can only be described as inadequate. Although all states having compensation require some medical service, many of the provisions are limited. Often either the amount of money to be expended is limited or the time is limited during which medical attention is to be provided. For example, thirteen states limit both the amount and time of benefits, although six of these provide for additional medical services in special cases or at the discretion of the commission. Twelve states limit the amount but not the time, and twelve others limit the time of the benefits but not the amount.

It may be thought that the injured workman should provide his own medical service out of the compensation payments for loss of wages, but an examination of the size of these payments will demonstrate how impossible that would be.

Compensation for loss of wages because of injury is not always paid. With the exception of Oregon, all of the workmen's compensation laws in the United States require a waiting period of from one day to two weeks, with the majority of the laws setting the time at seven days. During this waiting period no compensation for loss of wages is paid, although this provision does not relieve the employer from liability for medical benefits. These provisions have been subject to much criticism. It is contended that many injuries are of short duration and that workmen can as ill afford to lose their wages during these short periods as during longer ones. A study made by the Wisconsin Industrial Commission shows that about three-fourths of all accidents requiring medical attendance terminate within two weeks; and two-thirds within one week.<sup>7</sup> The chief reason for a waiting period is to prevent malingering, but this reason hardly justifies

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<sup>7</sup> John R. Commons and John B. Andrews, *Principles of Labor Legislation* (Harpers, 1936), p. 246.

as long a period as seven days. Skilled administrators and physicians should be able to detect malingering in less time than that.

The amounts paid for compensable injuries are determined by three factors: the rate, in a majority of the laws a percentage of the average weekly wages; the number of weeks the payment is to be made; and in most states a maximum total benefit expressed as a total sum of money or as a total number of weeks. For compensation purposes injuries have been classified as total disability of either a permanent or temporary nature, partial disability or impairment of earning capacity, and death.

The usual method of recompense for total disability is to pay the injured workman a percentage of his wage after the specified waiting period. Some states, Ohio and North Dakota for example, as well as the federal government, award to the injured workman  $66\frac{2}{3}$  per cent of his wages during the entire period of disability, which means throughout his life if the injury is permanent. Most states place a minimum and maximum limit on the amount to be paid; Massachusetts, for example, restricts the payment to \$18 per week but stipulates that full wages must be paid if they are less than the \$9 minimum required. In no case can the payment in Massachusetts be less than \$7 a week for normal weekly hours of 15 or more. Most of the laws, however, are less liberal. Approximately one-fourth of the states limit the payments in other ways. Total money limitations vary from \$3,000 to \$15,000 and time limitations from 260 to 1000 weeks.

In caring for partial disability most states at the present time base the compensation upon a fixed schedule of a certain number of weeks' benefit for each specific dismemberment, making no attempt to adjust the compensation to the lost earning power. When a man loses a finger, he receives benefits for the same number of weeks whether he be a highly skilled mechanic or an unskilled laborer, whether he be twenty years old or sixty. Such a system is easily administered but is open to severe criticism on the ground of its obvious injustice. There has been a tendency in recent years for states to take account of earning power in working out the compensation schedule. The California system is of this nature. The schedule upon which compensation benefits are based shows the percentage of impairment in earning capacity which each specific injury may cause a worker in any given occupation at any given age. Some other states have begun to take this very important factor into consideration and to adjust their schedules accordingly, but most of them still use the flat-rate schedules.

One of the great criticisms of existing compensation laws is that they do not provide sufficient payments. When it is considered that at the

present time many laborers are receiving rather low wages, it can easily be seen that a 50 per cent payment for disability is utterly inadequate. Particularly difficult to understand is the time limit that exists in a number of states. Just why, for example, should benefits for temporary total disability be paid, as in Kentucky, for a period of 46 weeks and then abruptly cease without any regard whatever to the man's ability to go back to work? It must be admitted that in these respects workmen's compensation as operated in the United States has not nearly reached the standards of justice and adequacy which might be attained.

In the majority of states, death benefits consist of a certain percentage of wages paid over a period of three or four years. Some of the more liberal states grant compensation to the widow for life and to each child under a certain age, but on the whole the states are rather niggardly in the granting of death benefits. Oklahoma pays no death benefit.

When compensation laws were first enacted, no particular thought was given to the problem of getting the injured worker ready to re-enter industry. There has been a growing realization that accident prevention and compensation do not in themselves constitute an adequate program for dealing with the problem of industrial hazards. More and more it is being recognized that compensation should be definitely tied up with a program of rehabilitation. Massachusetts enacted a rehabilitation act in 1918, and great impetus was given to the movement when in 1920 Congress enacted a law granting federal aid, on a dollar-for-dollar basis, to states carrying on rehabilitation work. Additional funds were made available by the provisions of the Federal Social Security Act. In 1939 with the adoption of enabling legislation by Delaware all of the states provide for participation with the federal government in this important part of a workman's compensation program.

The possibilities of rehabilitation may be seen from the experience of one state—Ohio. The Ohio Rehabilitation Bureau rehabilitated 240 totally disabled persons during the first six years of its operation. Largely as a result of this work 138 males were given an average earning capacity of \$829, and 36 females, \$567.<sup>8</sup> The following is a sample case taken from the state record: "A man lost both hands above the wrist when they were caught in a shredding machine. It seemed to everyone, except a rehabilitation supervisor, as if his productive years had ceased. The disabled workman was fitted with a pair of artificial arms with hook attach-

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<sup>8</sup> U. S. Bureau of Labor Statistics, *Bulletin No. 359*, p. 118 (1923).

ments and given training to become a stationary engineer. He succeeded, and today is supporting his family unassisted by anyone.”<sup>9</sup>

As this work is relatively new and is still in the experimental stage, it could not be expected that all of the states would have made a place for it in their compensation laws, although as a matter of fact most of them have taken some sort of try at it. If the work of rehabilitation is to be carried on most effectively, it must be coordinated with workmen's compensation. There are various ways in which this might be done. For example, instead of determining finally at the time of injury the amount of compensation to be paid, room could be allowed for adjustment after the rehabilitation bureau has done its work. Also allowance for maintenance funds during the period of training could profitably be made by the law. Obviously the great need here is for further study, but proper study can take place only as the outgrowth of a real desire to further the work as evidenced by sufficient appropriations for the purpose.

Workmen's compensation laws in the United States have many defects, as has been pointed out. But even if all these defects were remedied, the situation would still be far from satisfactory until the administration of the laws had been thoroughly aired and renovated.<sup>10</sup> Many of the workmen's compensation laws are being administered by underpaid, mediocre, unqualified men, and that is not the worst that can be said. Some of these men are actually trading in the arms and legs and lives of their fellow-men; and many others, if not grossly dishonest, are at least grossly hard and unfair. The report of an investigation made at the request of the governor of New York disclosed that the awards as made by the adjusters totaled \$13,712 when properly they would have amounted to \$52,280!<sup>11</sup>

Professor E. L. Bowers tells of “the case of a man working for a company which carried self-insurance. His left arm was caught in a great machine. It was literally wrenched from the socket, the whole shoulder was strained, the spinal column affected. The company physician—it is an insult to the many reputable physicians who are doing meritorious work in the industrial field to apply the term to this man—reported the loss of an arm at the shoulder. At the end of two months, the physician pronounced the man ‘cured,’ the temporary total disability payments were discontinued, and the award proper started. Needless to say, he was not cured, and he

<sup>9</sup> E. L. Bowers, *Is It Safe to Work?* (Houghton Mifflin, 1930), p. 125.

<sup>10</sup> For a sound discussion of major issues of compensation administration see Walter F. Dodd, *Administration of Workmen's Compensation* (The Commonwealth Fund, 1936), Chapter XVI.

<sup>11</sup> E. L. Bowers, *Is It Safe to Work?* (Houghton Mifflin, 1930), p. 31.

never will be cured. The physician had no good reason for pronouncing him cured. Being asked how the man would live, the physician admitted the seriousness of the injured employee's condition when he said, 'If he can't earn a living, let the d— fool die.'"<sup>12</sup> Professor Bowers also tells of a man who lost both a leg and an arm and was without compensation for nearly a year living "with his wife and three children in two dingy upstairs rooms, with only store-boxes for a table and chairs, and only burlap sacks for a bed."

This condition is mentioned because it is indicative of an unfortunate state of affairs that often attends the placing on the statute books of laws which are excellent enough in themselves. It seems as if the chief function of the very best laws is sometimes only to afford the very worst men an opportunity to make a living in the most contemptible way. The job has only been begun when the law is enacted. How to improve the administration of our laws is another question. One remedy is in sight, and that is better remuneration. Inadequate salaries are undoubtedly an important reason for the prevalence of incompetent men in government service. Until the general electorate awakens to the realization that the quality of the government received bears some relationship to the amount of the expenditures made, and that small taxes are not necessarily an indication of successful administration, no considerable improvement can be expected in the administration of our laws.

The adoption of workmen's compensation in the United States marked a real step forward in the field of social legislation. The modern safety movement dates almost entirely from the inauguration of workmen's compensation, and there is little doubt that compensation has done much to stimulate the prevention of accidents, speaking as it does a language that even the most ignorant and insensitive employer can understand. Compulsion was undoubtedly necessary to goad the majority of employers into introducing safety measures. To workmen's compensation, therefore, must be accredited not only the affording of relief to many thousands after accidents have occurred but the prevention of numerous accidents from ever taking place at all. Unfortunately there are indications that workmen's compensation is becoming less rather than more effective. It must be admitted that little has been done to modify, extend, and improve the initial enactments in the light of experience. That much remains to be done before the injured worker is adequately cared for financially is brought out by the U. S. Bureau of Labor Statistics, which reports: "The result of the various restrictions has been computed as placing upon the worker about 50 per cent

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<sup>12</sup> *Ibid.*, pp. 30-31.

of the burden of industrial accidents in the most favorable states and from 65 to 80 per cent in those less favorable."<sup>13</sup>

Our discussion of compensation laws has been unpleasantly fault-finding. Why not be thankful for what we have and save the carping for some more deserving subject? At least we have accomplished more in this field than in any other field of social insurance. Very true, but it is precisely this attitude of finding something to be glad about which as much as anything else has retarded the development and the refining of our compensation laws. Only an acute awareness of their defects on the part of the socially minded will bring about the re-examination and reformation which is so urgently needed.

### (b) *Health Insurance*

According to Sidney and Beatrice Webb, "In all countries, at all ages, it is sickness to which the greatest bulk of destitution is immediately due."<sup>14</sup> Accidents are the more spectacular and better calculated to engage the public attention, but illness is more far-reaching in its actual effects because its incidence is more frequent and more universal. Accidents befall only 5 or 6 per cent of the laborers annually, whereas illness overtakes 40 or 50 per cent.

Illness differs from accidents also in the greater obscurity of its causes. Many accidents can be traced directly to industry; but this is not true of illness, which may be caused by failure of the community to fulfill its obligation, or by negligence on the part of the worker himself, or by lack of funds to finance a hygienic scheme of living or by all of these causes or any combination of them, to say nothing of many others that might be named. Seldom if ever has there been a case of illness that could be attributed to one cause and one alone. The significant fact for our purpose is that in the United States today, no matter what the causes are, the worker is called upon to bear the full burden of his illness himself except in the states that allow compensation for occupational diseases.

It cannot be expected that the problem of health insurance will be solved by the voluntary efforts of individuals. The people who need it most are the ones least able to pay for it, even assuming that they will realize their need. The experience of the various industrial countries of the world indicates that no satisfactory system of insurance for the great masses of laborers is possible without an element of compulsion and without the

<sup>13</sup> U. S. Bureau of Labor Statistics, *Bulletin No. 541*, p. 904 (1931).

<sup>14</sup> Sidney and Beatrice Webb, *Prevention of Destitution* (Longmans, 1911), p. 15.

participation of others than the laborers themselves in the bearing of the burden. A number of countries have tried to stimulate voluntary insurance but have found the method unsatisfactory.<sup>15</sup>

In 1883 Germany enacted the first comprehensive system of compulsory health insurance. Austria followed in 1888, Hungary in 1891, and Luxemburg in 1901, all three with systems quite similar to Germany's. It was not until 1909 that another country, Norway, adopted a compulsory health insurance law. Other countries soon fell in line until now there are twenty-three countries with functioning compulsory measures.

Because Germany and England are more industrialized than the other countries, their systems are probably of the greatest significance for us. At first the German legislation applied only to specified classes of workers. In 1885, for example, it covered somewhat under 5,000,000 persons or about 2 per cent of the population. Its scope has since been extended to cover most of the wage earners of the country. In Great Britain all manual laborers employed for hire and all non-manual laborers receiving an income of £250 or under are included in the act, which means that all the wage earners are covered. Many of the recent acts have included most of the wage earners from the beginning. Other acts are still somewhat restricted, usually excluding agricultural and domestic workers.

In some countries the cost is divided between the employer and the employee, although in about two-fifths of the countries having health insurance the government also contributes. In Germany the worker and the employer each contribute one-half the premium. When a beneficiary, the worker receives 50 per cent of his wages after the third day of illness, the payments continuing for a total period of twenty-six weeks if necessary. In England, the employer and the employee pay approximately the same amount, and the government pays one-seventh of the total for men, and one-fifth of the total for women. Regardless of their wages the workers pay flat premiums and receive uniform benefits. Men and women pay 4½ and 4 pence a week. After a three-day waiting period men receive 15 shillings (about \$3.75) a week for a period of twenty-six weeks if necessary, and one half the amount a week beyond this period for as long as they are unable to work. Married women receive 12 shillings (about \$3.00) and single women 10 shillings (about \$2.50) for the first twenty-six weeks with the same half benefit for extended disability as is received by the men.<sup>16</sup> In Russia the employer, who in reality is usually the state, is re-

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<sup>15</sup> At the present time there are twelve countries with systems of voluntary health insurance, which for the most part are subsidized by the government.

<sup>16</sup> Millis and Montgomery, "Labor's Risks and Social Insurance" (McGraw-Hill, 1938), pp. 293-295.

quired to bear the entire burden, while in Roumania the employee must pay all.

The German and British systems are different in another important respect. In Germany the sick benefits cover the first thirteen weeks of industrial accident compensation, whereas in England the sick benefits and the accident benefits are kept entirely separate. In most countries the payments are based upon the wage, ranging from 50 to 100 per cent. In Russia the rate is 100 per cent, although this may be reduced to not less than two-thirds of the wage if the funds run short. Usually there is a waiting period, three days being the commonest length, and there is generally a time limitation running from sixteen weeks to an entire year.

The German law includes only temporary disability since chronic illness is taken care of in the old-age insurance act. This is typical of the countries having compulsory health insurance plans. Great Britain includes invalidity insurance in its health insurance system, but this is because she had until 1925 a noncontributory system of old-age pensions. All the compulsory health insurance systems in force provide medical attendance, including not only physicians' services but also hospital treatment, medicine, appliances, and whatever else is needed in the way of care for the disabled person.

A number of countries have made provision in their health insurance plans for maternity insurance. Most of these provide maternity benefits as part of their compulsory health insurance. Others have made provision through compulsory maternity insurance, through state-aided voluntary sickness insurance, through state grants, or through compulsory grants.

As yet nothing has been done in the United States in the way of compulsory health insurance despite the great amount of agitation on its behalf, although in 1919 a bill of this nature was passed by the New York State Senate. Thanks to official investigations in a number of states and to voluminous reports of private foundations there is no lack of data available to show the great need for some kind of state-aided health insurance. It has been found that only a small minority of the workers in this country carry any health insurance at all, and that the benefits received by these are low. What is worse, although to be expected, is that the lower-paid workers are almost never insured at all. It is also shown by these investigations that approximately 20 per cent of the workers are sick sometime during the year, the average length of the sickness being thirty-five days.

In 1914 the American Association for Labor Legislation drew up a bill in tentative form which has usually been followed in drafting bills to be introduced into the state legislatures. The bill provided for cash benefits equal to two-thirds of the weekly wage during twenty-six weeks, also medi-



cal care and maternity, funeral, and invalidity benefits. The plan was to be administered by democratic local associations, managed jointly by employers and workers under public supervision. The cost was to be borne equally by the employer and the employee with the state carrying the cost of central supervision.

More recently the President's Interdepartmental Committee to Coordinate Health and Welfare Activities recommended a National Health Program. This program provides for federal grants-in-aid to states supplementing their public health programs, for increasing hospital facilities and for providing medical care either for the indigent only or for self-supporting persons as well. A fifth recommendation was a plan to provide cash benefits to workers incapacitated because of illness. In 1939 Senator Wagner introduced a bill which embodied substantially these points, but it did not pass. Provisions for medical care and temporary disability benefits were later made part of the Wagner-Murray-Dingell bill introduced into Congress in 1943, but the sponsors have so far been unsuccessful in making this bill a law due in part to the strenuous opposition of the American Medical Association.

In November, 1945, President Truman urged Congress to pass a comprehensive health program to provide "health security for all regardless of residence, station, or race—everywhere in the United States." He urged legislation to provide for the construction of hospitals, for the expansion of public health, for strengthening professional education and research, for prepayment of medical costs through the expansion of the existing social insurance system, and, finally, protection against loss of wages from sickness and disability. This program has up to this writing (April, 1946) not been acted upon by Congress.

There has been one experiment in the United States with compensation for sickness. This is the Rhode Island law which became effective in May, 1942. That law calls for a 1 per cent pay-roll tax on workers and for the payments of benefits based on the worker's earnings during the period preceding the sickness. The total benefits which may be received during twenty weeks in any one year range from \$34.00 to \$364.50 and the weekly amounts based on the highest wages earned in the quarter range from \$6.75 to \$18.00. Administration of the law is the responsibility of the Unemployment Compensation Commission of the state.

The administration of the law has given rise to a number of problems none of which, however, seem so basic that they cannot be changed by amendments and close administration. There have been, for example, fraudulent or questionable practices such as malingering and "buck passing"

to the Board's physicians by the examining doctors in cases in which diagnosis is difficult. Other problems spring from the terms of the law itself. It is said, for instance, that the definition of sickness in the act is too broad, covering as it does, pregnancy, "nervousness," headaches, and alcoholism. There is also some question as to the adequacy of the 1 per cent tax.<sup>17</sup> Rhode Island apparently is trying to solve these problems, and, if she does, she will have provided a model for other states in affording some relief to wage earners who earn no wages because of sickness.

The need for some kind of health insurance in this country is very great, as is borne out by the testimony of many students who have studied the problem with great thoroughness. Too often the discussion of the question in and out of Congress has been merely a restatement of established prejudices either for or against enabling legislation. Whether the Rhode Island law will work, thus allaying some of the suspicion, remains to be seen, but our general social insurance scheme is far from complete so long as no social insurance covers loss of earnings for the sick workers.

### (c) *Old-Age Insurance and Pensions*

A great deal of attention has been given to attempts to lengthen life, and not without a fair degree of success. Concurrently with this process another change has been going on. Industry by demanding younger and younger men and turning away the old has been reducing the span of the worker's usefulness. The forces of these two processes combined has been to aggravate greatly the already serious problem of dependency. As with illness so with old age: those who most need to make provision for it are the ones least able to do so. Even assuming that they had the inclination, the workers could not save, because relatively few of them earn enough money to buy the day-by-day necessities. Is it reasonable to expect a man to provide for the future who cannot even provide properly for the present?

It seems evident that a large number of the aged workers must receive some kind of aid if they are to be saved from starvation. It has been estimated that in 1930 at least 40 per cent of the aged population in the United States was dependent in part or in whole upon children, relatives, friends, or organized public charity.<sup>18</sup> That means that approximately 2,700,000 of the 6,634,000 persons 65 years of age and over in the United States in 1930 were supported wholly or partly by others. Voluntary provision for old

<sup>17</sup> Compensation for Sickness in Rhode Island," *Monthly Labor Review*, Feb., 1945, p. 225.

<sup>18</sup> Abraham Epstein, *Insecurity, A Challenge to America* (Random House, 1936), p. 500.

age was obviously no solution for this important problem. And the old method of subsidized voluntary insurance was found to attract so few of the workers that it had been pretty well abandoned.

As in the case of accident compensation and health insurance, Germany was the first country to establish a compulsory old-age benefit plan. This was in 1889, and the system was a contributory one. The contributory principle has been used by practically all the nations except the Scandinavian and English-speaking countries. Noncontributory pension systems were introduced by Denmark in 1891, New Zealand in 1898, and Great Britain in 1908. These plans are financed entirely by the government. Great Britain, however, added a contributory pension plan in 1925.

The rapid development of old-age pension legislation can be seen by noting a few outstanding facts. Only five nations with approximately 100,000,000 total inhabitants had any form of pension aid for their aged workers before the year 1900, whereas today some form of pension is granted to part or all of the aged in forty-two foreign countries with a population of at least 600,000,000 persons. Over half the civilized world is now covered by various governmental systems of old-age pensions, India and China being the only large countries outside the fold. Thirty-one countries are operating contributory plans, ten have noncontributory systems, while Japan is the only country that still relies entirely on voluntary state insurance.<sup>19</sup>

The outstanding contributory plan is the German, and until 1925 the English was the most important noncontributory scheme. Under the German plan the worker contributes according to wages earned, the employer contributes an equal amount, and the government adds to the fund in addition to bearing the administrative expenses. The amount of the pension received depends upon the wage class of the worker and the number of years he has been insured. Salaried employees are cared for under a separate fund, as also are the miners. In 1938 about twenty-two million persons were covered by the plan and about two million were receiving benefits.<sup>20</sup>

The English plan was established by an act passed in 1908, and until 1925, when it was put on a contributory basis, it was a straight pension plan. Under the 1925 revision the premiums are shared equally by employers and employees. At the age of sixty-five, contributors to the fund are granted pensions regardless of their income. When the 1925 contributory

<sup>19</sup> *Ibid.*, p. 552.

<sup>20</sup> C. A. Kulp, *Social Insurance Coordination* (Committee on Social Security Social Science Research Council, 1938), p. 307.

act was passed, those who had already got beyond the age limit were allowed to continue receiving pensions under the earlier noncontributory acts.

As we have seen earlier in the chapter, the United States in the field of social legislation was the laggard among the important industrial countries of the world, but with the passage of the Social Security Act in 1935, the years of agitation for old-age pensions in this country had produced results. To be sure, federal government employees in the classified civil service have been covered by a compulsory contributory old-age and invalidity insurance plan since 1920. Likewise, after numerous official investigations, twenty-eight states and two territories had by 1935 enacted old-age pension laws. These latter, in general, were inadequate, non-contributory schemes that soon encountered financial difficulties. The need for a federal plan became increasingly evident.

Provisions for national care of the aged were a part of the 1935 Social Security Act to which important amendments were added in 1939. The law now provides for a contributory plan of old-age and survivors insurance to prevent dependency in old age and dependency caused by the death of the bread-winner. At the present time, employer and employee make equal contributions of 1 per cent of each worker's wages up to \$3000 per year. Men and women 65 years old or more, who have worked on jobs covered by the law, receive old-age benefits provided they have received enough wages in covered employments during certain periods of time. The wage and time limit are low. A worker must have received \$50 in wages during any calendar quarter to have that quarter count, and he must have half as many quarters of coverage as there were calendar quarters between January, 1936, and the quarter in which he became 65. The actual amount of the benefit he will be paid depends upon the amount of wages received and the number of years he has been covered. In any event, if the calculated benefit is less than \$10 a month, it will be increased to that amount.

In addition to this primary benefit, additional benefits are payable to his wife when she has reached the age of 65 and to his children under 16, or under 18 if they are still in school. Furthermore, when an eligible worker dies, his widow, if she is over 65 or if she has young children to support, receives partial benefits again depending upon the wages the worker has received, the number of years he had received them, and the number of dependent children in the family. In certain cases, monthly benefits are provided to the aged dependent parents of insured workers and lump-sum settlements are made on the death of an insured worker who leaves no person eligible for monthly benefits.

Unfortunately, the law excludes large segments of the nation's workers. The 1935 law excluded, among others, agricultural workers, domestic servants in private homes, federal, state, and local government employees, and employees of private charitable institutions. Many of these were excluded because of administrative provisions involved. No such excuse, however, can be given for the 1939 amendments by which 600,000 to 700,000 employees were excluded from the protection of the insurance system. This new exclusion resulted from a re-definition of agricultural worker to include even carpenters, painters, engineers, bookkeepers, and accountants who happen to work in some operation "incident to farming."

The exclusion of agricultural workers from the benefits of nearly all types of protective social legislation is based on a misunderstanding of modern agriculture. The small family-operated farms of New England and some other parts of the country do not present the same problems as the large-scale "factories in the field" so prevalent in other states. Comparing them and legislating for them together would be like trying to compare and legislate at the same time for the country store and the giant department store, or the village blacksmith shop and the modern foundry. A realistic approach would mean that all workers on large farms at least receive the benefit of modern social legislation.

Today about 40 million people are insured in this federal system, which means that if they should die today their families would be eligible to receive a lump-sum or monthly benefits as provided in the Act. Many more millions of wage earners have some credits toward benefits. That is, they are not now working in covered employment but have been in the past, or have not worked long enough to be fully insured. In all, 74 million people, or about two-thirds of the total population fourteen years old or more, had some credits in the system by the middle of 1945. According to the report of the chairman on the tenth birthday of the law, benefits totaling more than \$23,000,000 were in force for some 1.3 million persons. "These include about 760,000 old people—workers, their aged wives or widows, and aged parents of deceased workers who left no widow or child; 380,000 children of deceased or retired workers; and 145,000 widows who have the child or children of a deceased worker in their care."<sup>21</sup> Although there are still many improvements that can be made, this section of the Social Security law has gone a long way toward meeting the problems of the aged worker. Extension of coverage to additional workers and in-

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<sup>21</sup> A. J. Altmeyer, "The First Decade in Social Security," *Social Security Bulletin*, vol. 8, No. 8, p. 1 (Aug., 1945).

creases in benefit payments are part of the Board's recommendations for improving the law.

To care for those who have already reached old age and find themselves without sufficient support, the Social Security Act provides for federal grants-in-aid to states establishing approved plans for the care of the indigent aged. These plans must contain minimum provisions with respect to administration, to residence requirements, and to proper methods of appeal. The federal government will match state payments to these old people up to \$20 a month. That is, the state may pay eligibles which it selects any amount the state budget will stand. The federal government will pay an equal amount provided it is not more than \$20 a month. This procedure of aid has brought noncontributory pensions to millions of the aged poor living in private homes. The chief drawback is the wide discrepancy the states feel able to pay. In June, 1945, for example, \$5.71 was the state contribution in Georgia whereas in California indigent aged received \$27.32 from the state government. In one case, the federal government contributed a sum equal to that paid by the state. In California the federal government contributed \$20. The Board has recommended that this discrepancy in payments be reduced by additional federal payments to states not financially able to meet the full needs of their aged poor. Being helped by this plan for federal-state cooperation are more than 2 million old people, that is, about one aged person in five.

The original social security bill introduced by Senator Wagner followed the suggestions of the Committee on Social Security in providing for a system of voluntary old-age annuities to be purchased from the federal government. This scheme, designed to aid self-employed and professional workers as well as others not covered by the compulsory annuities, was not a part of the law as finally passed. This omission leaves a large segment of our population to plan as they may for their old age.

Railroad workers who are excluded from the provisions of the Social Security Law are covered by a similar law, the Railroad Retirement Law of 1937. Passed after two previous retirement laws had run into constitutional difficulties, the present retirement law provides for retirement and disability payments, for survivor annuities paid to the wife of the deceased employee, and lump sum death benefits in certain cases. The law likewise provides for continued pension payments to certain workers who were on the pension rolls of a railroad in 1937. The system is financed in the same way as the old age and survivors insurance of the Social Security Law, that is, by a pay-roll tax on the workers and an equal excise tax on the railroads. The rates, however, are higher.

*(d) Unemployment Insurance*

Although in some respects other grievances of the laborers are more important, the sorest point of all is probably unemployment. And the indifferent success, or worse, of the various measures that have been tried in an effort to reduce the evil lends added force to the demand for unemployment insurance. This has been much slower to develop than the other forms of social insurance, although employment has come to be generally regarded as a social responsibility and a number of experiments of the sort have been made. These have followed the usual course from the voluntary to the subsidized voluntary to the compulsory.

Voluntary insurance has been essayed chiefly by the trade unions, a natural development since the union is vitally interested in the problem of unemployment not only on the individual laborer's account but also on its own as an organization whose basic policy is the policy of standardization. The time when union standards are most seriously threatened is the time of unemployment when men tend to welcome work on any terms. Hence out-of-work benefits may logically take an important place in trade-union policy, and in Great Britain they do, usually taking precedence over sickness and superannuation benefits. In America unemployment benefits did not develop to any great extent. There were only a few unions that had made any systematic use of them, although many, of course, have granted and still do grant aid to members in distress. These grants, however, are spasmodic and can in no sense be regarded as insurance.

In Europe the development of out-of-work benefits by the trade unions led naturally to government-subsidized systems as the next step. In 1901 the city of Ghent in Belgium adopted this method, since known as the Ghent plan. The idea spread rapidly and was adopted not only by various cities in a number of European countries but also by several states, including Denmark, France, Norway, Switzerland, Spain, Belgium, and others. Great Britain adopted it for trades not covered by the unemployment insurance law of 1911 as well as for the trades included in the compulsory provisions. In a number of cases the trade-union funds are subsidized by both the state and the municipality. The subsidies are sometimes as high as one-half to two-thirds of the total allowance received by the insured. The subsidies paid by the state to the union are based on the benefits payable or the contributions received.

Although the system of subsidized trade-union benefits possesses an undoubted superiority in that it encourages the unions to make provision for their own unemployed members, it has also very obvious disadvantages.

In being limited to organized labor it shuts out large numbers of the workers who most sorely need its help. Also, some think it unfair for the state to encourage the development of a militant organization like the trade union which is at war with another section of the population. Obviously, too, it can be used effectively only in countries having strongly organized unions.

There is an unmistakable tendency among the various European countries toward compulsory unemployment insurance. Apart from the experiment begun in St. Gall, Switzerland in 1894, which failed after a two-year trial, the first experiment in compulsory unemployment insurance was made by Great Britain with her law of 1911. Austria, Bulgaria, Germany, Irish Free State, Italy, Luxemburg, New Zealand, Poland, Queensland (Australia), Russia, Switzerland, Canada and Yugoslavia later adopted plans of compulsory unemployment insurance.

In most of the foreign plans now in operation the insurance is obligatory upon all wage earners and salaried workers earning less than a specified sum. Usually agricultural workers and domestic servants are excluded from this insurance because of administrative difficulties and also because unemployment is rarely serious in these occupations. Also workers in the public service are usually exempt. Under most plans regular weekly contributions are made by the workers, the employers, and the government. In a few cases the government contributes only supplementary benefits. Originally the laws provided for the payment of benefits from twelve to twenty-six weeks in the year. \*

When the plans were first put into operation, serious attempts were made to keep the funds actuarially sound. But because of the severity of the depression of the thirties the benefit periods were lengthened in most countries and actuarial principles had to be relaxed to some extent. Usually the laws require a certain minimum number of contributions by the insured before benefits are paid, but these restrictions were also eased as the depression wore on. In some countries the benefits are based on flat rates and the exact rate is determined according to the number of dependents while in other countries the amount of the benefits is determined by the amount of wages earned. Practically all of the laws are constantly being changed and consequently it is difficult if not impossible to describe them in detail. The great number of changes arises from the experimental nature of the plans and also from the severity of the past depression.

The general nature of the plans can best be seen from a brief survey of the oldest and best known of them all, the British system. The act of 1911 applied only to workers in the building, engineering, and shipbuilding industries, which were particularly subject to unemployment, but it has been



gradually extended to cover other workers. It has been amended on a number of occasions. In 1927 a new law was passed consolidating all the laws dealing with unemployment insurance, and several enactments have taken place since this.

The original law covered about 2,500,000 workers. The employer and the employee were each required to contribute five cents a week to the fund, and the government added one-third of their combined contributions. Benefits amounted to \$1.75 a week, and could not be received for more than fifteen weeks in one year. Also, the worker had to be insured five weeks for every week of benefits received. There were other provisions which in various ways protected both the employer and the employee. Insurance benefits could not be drawn by a worker if he was discharged for incompetence or bad conduct, if he went on strike, or if he quit without sufficient reason. As an incentive to stabilize his production and thus reduce unemployment, the employer was entitled to a refund of one-third of his own contributions for each worker retained by him not less than forty-five weeks in a year. The employee was not compelled to take work where a strike was in progress. Neither was he required to accept wages below those which he was accustomed to receive. Finally, if a man over sixty years of age had been insured for ten years and had made 500 contributions to the fund, he would receive back his total payments, less his total benefits of course, plus compound interest at  $2\frac{1}{2}$  per cent.

The amendment of 1920 made some important changes in the law, extending the system to practically the whole working population of Great Britain. Agricultural workers, domestic servants, public employees, and non-manual workers earning over \$1250 a year were the only important exceptions. Contribution and benefits were increased, the waiting period was reduced from one week to three days, and six weeks' contributions instead of five were required before any benefits would be paid. Subsidies to trade unions were dropped, but no change was made in the arrangement whereby unions having an unemployment system of their own were allowed to administer the state benefits. A rather significant change was the dropping of the refunds to employers for steadily employed workers.

With the coming of the unemployment crisis on the heels of the 1920 act, conditions became such as to make it almost impossible to administer the law as was originally intended. When it developed that the benefits from the unemployment insurance were not sufficient to relieve the distress caused by the crisis, the machinery of the unemployment insurance act was utilized extensively in administering relief. Dependents of the insured were granted allowances, insured persons received benefits without any

great regard for the requirements regarding contributions, either in number or in amount, and practically continuous benefits were paid. An attempt was made to maintain the theory of unemployment insurance by treating the loans which had to be made from the treasury as genuine debts of the fund to be repaid with interest.

Recognizing that the Unemployment Insurance Plan was losing any claim to be called insurance, the British Government in 1931 moved to distinguish between insurance and relief. Workers not otherwise entitled to benefits were to be paid transitional payments by the central government until the worker had been absorbed into the local poor relief plans. Continued unemployment made this plan unworkable because more and more workers became ineligible to insurance through lack of participation in the insurance fund, and because the distressed areas of the country were unable financially to support the increasing number of unemployed whose support was turned back to the local authorities. Finally Britain took a third step toward meeting its unemployment problem when the national government undertook to establish a system of unemployment insurance with a supplement of unemployment assistance. When a worker has used up his insurance benefits and still remains unemployed, he is eligible to receive unemployment assistance. One great difference appears between the insurance and the assistance payments. Insurance is paid upon proof of unemployment without regard to need; assistance is paid to the unemployed but only upon proof of need. Thus Great Britain has separated insurance and relief, keeping both, however, under a national system. The new plan has not been tried as yet for shortly after it started business conditions improved. The coming postwar period may show to what extent the British method will operate successfully.<sup>22</sup>

Let us examine the much-amended system to see what it is like today. Of particular interest are the contributions and benefits as they now stand. Benefits are payable between the ages 16 and 65. They will be paid to qualified insured contributors for periods not exceeding 156 days in a benefit year. Additional benefits may be paid if the insured person has been insured for at least five insurance years. Ordinarily a benefit year begins when the unemployed insured contributor proves that the first statutory condition, namely payment of 30 contributions in the preceding two years, is satisfied. The weekly contributions amount to 10 d. for men 21 and

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<sup>22</sup> For a comprehensive study of the British Unemployment Insurance and assistance plans, see Eveline M. Burns, *British Unemployment Programs, 1920-1938* (Social Science Research Council, 1941).

under 65 years, and 9 d. for women of the same ages; 9 d. for young men 18 and under 21, and 8 d. for young women; 5 d. for boys between 16 and 18, and 4½ d. for girls; 2 d. for children under 16. The benefits range from 5 s. per week for girls under 17 to 17 s. per week for men aged 21 and under 65. The first six days of each continuous period of unemployment are a waiting period for which no benefit is payable.

The administration of the plan is relatively simple. Each worker eligible to participate receives an unemployment book, which he deposits with his employer upon being hired. The employer affixes stamps representing the combined contributions of the worker and himself and deducts the worker's share from his wages. The stamps are purchased by the employer from the post office, and the post office forwards the money received to the Ministry of Labor, which is in charge of the unemployment insurance fund. When the worker becomes unemployed he obtains his book from the employer and deposits it with a labor exchange or insurance office. He thus becomes officially registered as unemployed and is entitled to benefits under the conditions of the law.

The United States did not have any general system of unemployment compensation until after the passage of the Social Security Act in 1935. Wisconsin in 1932 had taken legislative action and had established a system of unemployment reserves. Action by the federal government, however, soon brought unemployment insurance plans in every state.

Unlike the British system, the federal law does not establish any centralized plan. Instead the federal government provides the incentive for state action and establishes certain standards for the states to follow. The incentive is a scheme of tax offsets for employers living in states having acceptable unemployment compensation laws. The Social Security Law provides for a tax of 3 per cent on all employers of eight or more with the usual exceptions of agricultural workers, domestic servants, employees of charitable institutions, employees of governmental agencies and some others. If the state in which the employer lives has a law which meets the minimum standards established by Congress, the employer may take a tax credit of 90 per cent of the federal tax liability, thus paying to the federal government only 0.3 of 1 per cent of the pay roll. As with old age and retirement insurance, the pay roll is described as salary or wages up to \$3000 for each employee. With such an incentive, state legislatures lost no time in passing unemployment compensation laws.

The minimum standards are neither numerous nor arbitrary. A state law to be approved must contain provisions that all compensation be paid through public employment offices; that money received be paid over to

the Secretary of the Treasury of the United States to the credit of the Unemployment Trust Fund; that all money withdrawn from that fund be used solely in the payment of compensation; and that no compensation shall be denied to an otherwise eligible individual who refuses a position made vacant by a labor dispute, or a position in which the wages and hours were substantially less than he had been receiving, or if as a condition of work he be required to join a company union.

Within these broad limits the present fifty-one compensation laws differ somewhat on fundamental principles and more widely on details. Chief difference in principle is whether the employers are to receive credit for good employment experience thus paying lower taxes. Some of the state laws have a pooled fund with each employer paying a uniform percentage of his pay roll into the state fund but out of which all benefits are paid to the unemployed without reference to their former employer. The other laws provide for experience rating thus enabling the employer with little unemployment to reduce the size of the tax paid to the state.

Supporters of experience rating in unemployment compensation often draw a parallel between it and workmen's compensation laws, but a moment's thought concerning the difference between the causes of industrial accidents and the causes of unemployment will bring out the essential weakness of this theory. We do not know all the causes of industrial accidents with complete exactness, but it has been amply demonstrated that individual employers can substantially reduce the accident rate. Recall what the steel industry has done in this direction.<sup>23</sup> On the other hand, while a few employers have succeeded in reducing unemployment through various stabilization measures, their accomplishment has in the main been limited to seasonal unemployment. There is nothing among the causes of industrial accidents comparable to the business cycle. And after all it is the business cycle that in the main we have to cope with. Our most serious unemployment is cyclical and in a competitive economic society the individual employer can hardly be held responsible for cyclical unemployment.<sup>24</sup> The efforts of the individual employers may be and are highly successful in reducing accident hazards but they are and must remain largely futile in the face of weather, fashions, and the uncontrollable social forces that lead to the business depression.

Furthermore the employer already has strong inducements to maintain

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<sup>23</sup> See Chapter III. The contention of Mr. H. W. Heinrich of the Travelers' Insurance Company that 88 per cent are due to supervisory causes emphasizes the individual employer's responsibility. See *Industrial Accident Prevention* (McGraw-Hill, 1931).

<sup>24</sup> This point has already been discussed in some detail in Chapter I.

steady production. Idle plants mean a loss in revenue, because overhead, depreciation, and taxes go on while profits decline or cease altogether. What further inducement should an employer need to stabilize employment? It seems improbable that the relatively small rate reductions provided for in these laws would do what fear of heavy losses has failed to accomplish. The employer would keep up employment if he could.

There is the possibility that because of the employer's having to bear part of the cost of unemployment he will be more cautious about expanding his business when trade is brisk. Overexpansion of business might thus be prevented to some extent and a contribution be made toward stabilization. There is real doubt, however, whether a small tax would be a strong enough force to restrain him from making a try for larger profits by expanding his business when prospects were particularly bright.

One other fundamental difference exists among the several state and territorial laws. This has to do with the contributions to the compensation funds. The federal law taxes the employer only but the states are at liberty to deviate from that plan. Only five states, however, now tax the workers as well as the employers.

The other differences among the laws are chiefly matters of detail and result not so much from any fundamental differences in philosophy of social insurance as from expediency. The federal tax law, for example, covers employers of eight or more. About half of the state laws follow this same limitation whereas the other half provide for wider coverage. In general the laws exclude from coverage employees engaged in agricultural labor, domestic service, service for a nonprofit organization, and casual labor. All of the state laws have similar eligibility requirements for receiving benefits. There is always a one or two week waiting period before the insurance is payable. Then a worker may be ineligible for benefits if he leaves his job without good cause, has been discharged for misconduct, has misrepresented the facts in his case, or is engaged in a strike out of the winning of which he may receive advantages. In addition any worker who refuses to accept a suitable job, as suitable is described in the specific law, is denied benefits. Denial of benefits in some instances is for a specific number of weeks depending upon the reason for the denial in the first place. In other cases the length of time is determined by the administrative body.

The insurance payments in all cases depend upon the earnings of the employee during a preceding period of time called the base period which is usually the four preceding quarters. Benefits ranging from a minimum of \$2 a week in one state and \$10 a week in another to a maximum of

\$15 to \$22 a week are paid for a varying number of weeks. In some states even the duration of the benefits is based upon past earnings but now the better laws provide for a uniform period of payment of 16 to 20 weeks.

Whether the American system of unemployment compensation will weather a period of severe unemployment remains to be seen. At the present time the several state systems are in excellent financial condition as a result of full wartime employment. Some students of the subject, however, feel that experience rating combined with considerable unemployment may cause these war-swollen reserves to disappear rapidly, in some cases at least, to a dangerously low figure. Time will give the answer to that problem.



PART VI  
SOME CONCLUSIONS





## CHAPTER XXI

### SOME CONCLUSIONS

#### CAN THE LABOR PROBLEM BE SOLVED?

MR. F. W. TAYLOR of scientific management fame asserts, "Scientific management . . . has for its very foundation the firm conviction that the true interests of the two [employer and employee] are one and the same."<sup>1</sup>

Mr. R. H. Tawney views the conflict in a somewhat different light: "The idea that industrial peace can be secured merely by the exercise of tact and forbearance is based on the idea that there is a fundamental identity of interest between the different groups engaged in it, which is occasionally interrupted by regrettable misunderstandings. Both the one idea and the other are an illusion. The disputes which matter are not caused by a misunderstanding of identity of interests, but by a better understanding of diversity of interests. . . ."<sup>2</sup>

It is hardly necessary to state at this advanced stage of the discussion that we are convinced that Mr. Tawney has analyzed the industrial struggle more discerningly than Mr. Taylor. There is indeed a fundamental conflict of interest between the employee, who is interested in limiting the supply of the commodity he has for sale, and the employer, who is primarily interested in having an abundance of that commodity. It does not follow necessarily that all the interests of the employee are diametrically opposed to the interests of the employer. As a matter of fact, the two groups have much in common, and furthermore there are modifying influences that tend in some circumstances to reduce the severity of the conflict.

If the labor problem, then, arises out of the presence in our economy of these two groups who in spite of having some interests in common and in spite of there being modifying factors, as just indicated, are fundamentally in conflict, then the problem cannot be solved as long as the present employer-employee relationship exists. This relationship grew out of the development of industry on a large scale following the social and economic changes that occurred in the latter part of the eighteenth century and the early part of the nineteenth. It is an integral and important part of the

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<sup>1</sup> F. W. Taylor, *Principles of Scientific Management* (Harpers, 1911), p. 10.

<sup>2</sup> R. H. Tawney, *The Acquisitive Society* (Harcourt Brace, 1920), pp. 40, 42.

present economic system and therefore cannot be radically altered except by a fundamental change in that system. Given that system, the labor problem must continue as in the past to vex the industrial world. Solution lies only along the line of fundamental change. Government ownership, state socialism, guild socialism, syndicalism, cooperation, and communism are some of the substitutes that are being proposed. But before leaping joyously in one of those directions in order to find a solution, let us take due account of a pertinent fact which in our enthusiasm we might easily overlook.

The present labor problem consists of a clash of interests between the employer class and the employee class. But what are the laborers striving for in this conflict with the employers? They are struggling for an improved economic status, for greater economic power. The fact to which we have reference is that the struggle is not new. From the dawn of human history man has engaged in an economic struggle. At certain times and in certain places it has been a struggle for mere existence, and in other places and at other times for a higher standard of living, but always there has been this economic struggle. When our present economic system came into being, the laborers in their quest for an improved economic status found the employers blocking their path and so their struggle has taken the form of a conflict with the employers. Change society fundamentally, eliminating the employer-employee relationship, and that particular manifestation of the economic struggle will disappear and, in a sense, the labor problem with it. Still the elemental struggle for an improved economic status, for greater economic power, will go on, its special character determined by the type of social and economic society in which it is being waged. There will be a different alignment, different methods perhaps, different weapons, different war cries, but the basic economic struggle was in the beginning, is now, and so far as anybody can perceive, ever shall be.

Although there may be no permanent solution to the labor problem, there are rules that may be established for cooperation in those areas where the interest of management and labor are the same and for proper conduct in those areas where there is a distinct conflict of interests.

Establishing the rules has always been the task of government. We have seen that during the past decade the federal government has provided a new foundation of law on which management and labor can build industrial cooperation. The federal government has said that no worker in the United States, over whom Congress has jurisdiction under the Constitution, may receive less than forty cents an hour for his work and must

be paid a premium if he works for more than forty hours in a week. Likewise it is against the rules to employ children in industries covered by this Fair Labor Standards Act.

Government has likewise established minimum standards of security for the workers in this country. By state action, the earnings of workers incapacitated through industrial accident or disease are in part protected. Through federal action states have provided for a brief period of security when unemployment strikes a worker. Likewise through federal action some of the terrors of the incapacity of old age have been alleviated by provisions for retirement insurance. The specter of income loss through sickness still haunts the American worker but legislation has been introduced to remove this fear too.

Having established minimum standards the federal government has set up rules for collective bargaining over wages, hours, and working conditions higher than the minimums. The National Labor Relations Act in guaranteeing the rights of workers to organize and bargain collectively without employer interference provides that American workers and employers in their dealings with one another must obey certain regulations. During the period of the Second World War the federal government went further than establishing the rules and actually determined through the National War Labor Board what the conditions above the minimum should be. Compulsory arbitration of this type, however, has little place in a peacetime economy.

Minimums have been established and rules laid down for bargaining for standards above those minimums. It remains true nevertheless that the activities of unions and employers will determine the future trend of labor relations in this country.

On their part, employers seem to be gradually accepting the fact that collective bargaining is here to stay. As one after another employers in the basic industries of the country have signed union agreements, employers have found that it is possible to work with unions. One still hears the statement that all unions are rackets but such mistaken generalizations are heard less and less among employers who have come to know labor leaders. It is doubtful, for example, that the period following the Second World War will see the same "union-busting" activities that followed the armistice in 1918. Employers have learned that, in an organized society such as ours, organization among workers can only be thought of as part of the capitalistic society under which we operate. They have learned further that labor leaders are like employers. Some are honest and intelligent and some are not.

Organized labor too is beginning to learn new lessons of cooperation in a society in which during recent years it has become quite respectable and acceptable. Labor is beginning to talk less of rights and more of responsibilities. Thoughtful leaders of labor are urging labor organizations to put their houses in order by sweeping out labor racketeers and by eliminating membership discrimination. These same leaders are urging upon some unions the adoption of representative democracy rather than the autocracy that has been their form of government in the past.

As we have said above there will always be differences of a fundamental nature between labor and management. Those differences will often end in strikes. Nevertheless the increase in and the acceptance of collective bargaining in the past ten years and the recognition on the part of organized labor that their organizations can be improved may lead to better labor relations in the future.

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